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POLITICAL STATUS OF PUERTO RICO

HEARINGS

BEFORE THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 710, S. 711, AND S. 712

TO PROVIDE FOR A REFERENDUM ON THE POLITICAL STATUS OF
PUERTO RICO

JUNE 1 AND 2, 1989

PART 1

Printed for the use of the
Committee on Energy and Natural Resources

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S311-62.

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POLITICAL STATUS OF PUERTO RICO

THURSDAY, JUNE 1, 1989

U.S. Senate,
Committee on Energy and Natural Resources,
Washington, DC.

The committee met, pursuant to notice, at 9:37 a.m., in room SH-216, Hart Senate Office Building, Hon. J. Bennett Johnston, chairman, presiding.

OPENING STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The Chairman. The hearing will come to order.

We are here this morning to begin the process of legislating on the political status of Puerto Rico. We do so because it is right that the people of Puerto Rico have a choice in determining their political future.

We do so also at the request of the three principal political parties of Puerto Rico, Commonwealth, Statehood, and Independence, and we do so at the invitation of the President of the United States who announced his support of status legislation in the State of the Union.

There have been referendums on status in Puerto Rico in the past. In 1952 the people were given the opportunity to approve the Constitution implementing commonwealth status. Their answer was yes.

In 1967 the people were asked to state their preference between statehood, independence, and commonwealth status. They chose commonwealth.

Those referendums were criticized, however, as being inequitable and misleading.

In 1952 the opportunity to vote for alternatives to commonwealth was not given. In 1967 the three options were named but not described leaving a vast sea of doubt and ambiguity as to what any of the three meant.

In addition, Congress did not indicate whether it would accept a change in status or under what conditions it might accept that change.

The process we begin today is designed to give the people of Puerto Rico realistic options from which they can choose and expect that an option will be implemented. The process has been designed in close consultation with each of the parties, and I think it is safe to say that the process, at least thus far, and I hope throughout the process, has been endorsed by all three parties.

Senator McClure and I have introduced three bills to provide for referendums in Puerto Rico on future status. The introduction of three separate bills reflects our uncertainty about the level of detail which Congress would be able to achieve during its consideration.

S. 710 has a very brief, virtually one or two-word description of the three statuses. S. 711 has a general description of the three status relationships, and S. 712 has the full description. S. 712 is designed to be fully implementing, self-executing, when and if finally approved by the people of Puerto Rico. S. 712 is designed by the final vote of the people of Puerto Rico to go into full force and effect.

I believe that we all agree that S. 712 is the preferred approach. S. 712 would provide that the status option selected in a referendum by the people of Puerto Rico would go into effect according to the terms of legislation at that time already enacted by Congress. It would thus avoid the need and the uncertainty of having to return to Congress after an initial referendum to negotiate further legislation on the details of implementation and transition.

Each of these status options is a separate proposal with its own advantages and disadvantages. For example, statehood has the advantage in that all federal programs would apply immediately.

On the other hand, it would have the disadvantage in that there would be certain obligations which do not now apply, such as the payment of taxes. The people of Puerto Rico must weigh these factors and decide for themselves which is the preferred option.

Before these options are put before the people, however, Congress must decide what is feasible under each status.

I can assure you that Congress will make substantial changes in all three definitions, and I fully expect that the advantage of each option will be reduced from what the parties have proposed.

I might say to my colleagues S. 712 is what we call a star print. It is taking the original bill as introduced by Senator McClure and I, and which simply left a blank in the definition of each of the three statuses. And what we have done is taken the proposed version of the status from each of the three parties and inserted that verbatim into this star print.

Obviously it does not mean that that will be the form in which the committee will finally pass the bill out, if we do finally. And I hope we do approve legislation out of this committee. But it is an easy way for us to have before us in one document, that is the star print of S. 712, the preferred status of each of the three parties.

One of the reasons for this reduction of the benefits and the proposals is the harsh fiscal reality facing Congress. It is certain that if a definition includes an increased benefit, then Congress will be looking for a way to offset the cost of that benefit.

For example, if there is a proposal to delay the imposition of taxes, then members will argue that you should be willing to delay participation in new programs. In other words, we're going to try to make—I think our goal will be try to make this legislation deficit neutral.

With the federal budget deficit as large as it is and with the tremendous sensitivity to expenditures that currently exist in Washington, Congress will have a very high priority on budget neutrality.

I would like to emphasize three elements in this process. First, it is our intention to produce legislation in this Congress in order to provide for a referendum in Puerto Rico during 1992.

Second, this is a task that will take a tremendous amount of work, cooperation, and coordination among members of the committee, other committees, the three political parties in Puerto Rico, and the administration. There are an enormous number of issues to be considered and resolved.

Finally, this issue was important enough to be included in the President's State of the Union Address. Its implications are substantial and merit the highest priority, and the maximum effort from all of us.

Puerto Rico is vitally important to the United States. It contributes to the nation through its rich culture and its history. It is an important and integral contributor to the nation's trade, to its defense, and Puerto Rico is the home of three and a half million American citizens.

This legislation will determine the most basic and fundamental rights and relationships of those citizens. At issue is the future of Puerto Rico and its people.

[The texts of the bills and a statement from GSA follow:]

II

101st CONGRESS
1st Session

S. 710

To provide for a referendum on the political status of Puerto Rico.

IN THE SENATE OF THE UNITED STATES

April 5 (legislative day, January 3), 1989

Mr. Johnston (for himself and Mr. McClure) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide for a referendum on the political status of Puerto Rico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be referred to as the .

SEC. 2. REFERENDUM.

(a) In General.—An islandwide referendum shall be held in Puerto Rico in which qualified voters of the Commonwealth of Puerto Rico shall be presented a choice of selecting and negotiating one of three status options for Puerto Rico as follows:

(1) Statehood with full powers and cultural identity duly recognized;

(2) Independence with full economic guarantees; or

(3) Enhanced Commonwealth in permanent union.

(b) DATE OF REFERENDUM.—The first referendum shall occur on , 1991.

(c) RETURNS OF REFERENDUM.—The returns of the referendum held under this Act shall be made to the Governor of Puerto Rico, who shall cause them to be canvassed in the manner provided by law for the canvass of votes cast in general elections in the Commonwealth of Puerto Rico. If there is not a majority in favor of one of the three options, then there shall be, on , 1991, a runoff referendum between the two status options which had received the largest number of votes. The Governor shall certify to the President and to the Congress of the United States that decision of the people of Puerto Rico which received a majority of the votes cast.

(d) APPLICABLE ELECTION LAWS.—The election laws of the Commonwealth of Puerto Rico shall apply to the referendum held under this Act.

SEC. 3. NEGOTIATIONS TO DEVELOP LEGISLATION BASED ON REFERENDUM.

(a) NEGOTIATIONS.—Following certification by the Governor as provided in section 2(c), then the process, involving representatives of the principal political party representing the status option selected, and in full consultation with the other two principal political parties, shall begin to develop implementing legislation in consultation with the Committee on Energy and Natural Resources of the United States Senate and the appropriate committees of jurisdiction in the United States House of Representatives. Such legislation shall, upon enactment, authorize a further referendum of the people of Puerto Rico to approve or disapprove the selected status as defined in the legislation. A change of status shall not be effective unless or until approved in such a referendum.

(b) TIME LIMIT.—The second referendum to approve or disapprove the selected status as defined in the legislation developed under this section shall occur no later than the end of the Congress which is in session on the fourth anniversary of the date of the Governor's certification provided for under section 2(c), or as may be otherwise provided in such legislation.

○

101st CONGRESS
1st Session

S. 711

To provide for a referendum on the political status of Puerto Rico.

IN THE SENATE OF THE UNITED STATES

April 5 (legislative day, January 3), 1989

Mr. Johnston (for himself, Mr. McClure, and Mr. Simon) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide for a referendum on the political status of Puerto Rico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) the United States of America recognizes the principles of international law with respect to its relationship with Puerto Rico; and

(2) the United States is committed to a process of consultation and negotiation with the people of Puerto Rico leading to a referendum on the issue of political status to be conducted in a fair and equitable manner.

★(Star Print)

SEC. 2. REFERENDUM.

(a) IN GENERAL.—An islandwide referendum shall be held in Puerto Rico in which qualified voters of the Commonwealth of Puerto Rico shall be presented a choice of negotiating one of three status options for Puerto Rico as follows:

(1) Statehood;

(2) Independence; or

(3) Commonwealth.

For the purpose of these negotiations it is understood that the initial position of the people of the Commonwealth of Puerto Rico and of the Congress of the United States is that the terms shall be as follows;

(b) INITIAL DEFINITIONS.—

(1) Statehood: Upon admission as a state, Puerto Rico would cease being a territory of the United States. The Commonwealth of Puerto Rico would be admitted as a sovereign State of the Union, with its current Constitution, on an equal footing and in true permanent union with the other fifty States.

The new State of Puerto Rico shall be known as The Commonwealth of Puerto Rico. In Spanish it shall be known as "Estado Soberano de Puerto Rico".

Admission to the Union has historically been a flexible and varied process which has been adapted to the individual circumstances of each new state. Congress, which has the constitutional power to facilitate the admission of new States, would provide for a smooth process of adjustment from the tax structure of the territorial status to the Federal fiscal system.

The Commonwealth of Puerto Rico would be assured of its reserved state right under the Constitution to continue to maintain both Spanish and English as its official languages, as well as of its right to preserve and enhance its particular cultural characteristics.

Statehood creates the only permanent union with the United States that is consistent with the "more perfect union" of equal states established by the United States Constitution.

Statehood would entail fundamental political and economic betterment for the Commonwealth of Puerto Rico.

Statehood means economic self-reliance and social justice, including parity for its residents in those aspects of federal legislation that cover the residents of the several states at the time of admission and in the future.

Statehood means political equality, and specifically, the right to participate in the process of election of the President and Vice-President of the United States as well as the right to elect two (2) U.S. Senators and the corresponding number of members of the U.S. House of Representatives.

Statehood means that all benefits and protections of the United States Constitution would be fully bestowed on the

People of the Commonwealth of Puerto Rico together with the guarantee of full protection by the Federal judicial system.

Statehood entails the immediate full extension of federal entitlements and legislation providing parity for the residents of Puerto Rico in all Federal programs. The Commonwealth will assume all responsibilities of a State of the Union.

Statehood is a political formula recognized by the international community through Resolution 1541 (XV) of the General Assembly of the United Nations and through Resolution 1469 (XIV) of that body, which was adopted upon the admission of the new States of Alaska and Hawaii.

Statehood embodies the highest degree of autonomy and sovereignty in true permanent union with the several States.

(2) INDEPENDENCE: (A) In order to ensure the legitimate interests of Puerto Rico and the United States, to strengthen bonds of friendship and cooperation, and to provide for equitable economic relations between both nations, the United States shall recognize the independence of Puerto Rico in accordance with the principles set forth below, thus guaranteeing the necessary conditions for a rational and mutually advantageous transition before and after the proclamation of Puerto Rico's independence.

Then I turn to page 3 of the General Accounting Office testimony provided by Frank Conahan et al. He says, at the top of the page:

> Savings highly dependent on personnel actions. The Commission estimated that its base realignment and closure recommendations, when implemented, should lead to an annual savings of $694 million. It is important to recognize that much of these estimated savings result from large reductions in military and civilian personnel at closing bases.
>
> For example, the Commission estimates that closing the five Air Force bases included in our sample would result in annual savings of approximately $381 million. About $320 million (84 percent) of those savings result from reductions of about 9,600 personnel. Overall it is estimated that the Commission's recommendations would result in eliminating 7,748 civilian and 12,889 military positions.

My first question is do you know whether or not the Chairman of the JCS, in making his statement which you referred to on page 5, had in mind these collateral consequences?

Mr. CARLUCCI. I am certain that the Joint Chiefs who reviewed this collectively took into account personnel savings as well as savings achieved through selling facilities and other kinds of savings in such things as support functions—security guards, building maintenance and that kind of thing.

Senator WARNER. Are these force structure cuts in the FYDP?

Mr. CARLUCCI. They would not be in the FYDP. The Commission took the force structure in the FYDP as a given and maintained that force structure. I guess the answer is——

Senator WARNER. I guess where I am coming from, it is clear that the GAO thinks the savings are predicated on substantial end cuts, force level cuts, and yet I cannot find the correlation where that planning is in motion either in the FYDP or the forthcoming presentation from the future Secretary of Defense.

Mr. CARLUCCI. What happens here is when you get some personnel savings, you can put them to higher priority needs within the existing force structure. So force structure, particularly the savings that are relatively small, need not change as a result of these savings. So you do not see the immediate impact on force structure of these particular savings.

Furthermore, a lot of them, as I pointed out, are maintenance function civilian personnel not directly related to military force structure.

Senator WARNER. Mr. Secretary, you have 12,889 military positions as forecast by the GAO. Now you are talking about something other than maintenance and people of that nature. In the first place, that is obviously in the 7,748 civilians. I just want to make sure you and I are joined here.

The question is, do you think the GAO is incorrect?

Mr. CARLUCCI. I think you have to make a distinction, Senator Warner, between force structure and end strength. When you are talking about force structure, you are talking about the number of tanks, airplanes and ships.

Senator WARNER. Correct.

Mr. CARLUCCI. When you are talking about end strength you are talking about number of people. So when we change end strength it does not necessarily mean the force structure has to change.

Senator **Warner**. You are correct. Let me go back and rephrase it then. It should be an end strength. I put my question on end strength.

Mr. **Carlucci**. That is right.

Senator **Warner**. Do you think that there will be a reduction in end strength as a consequence?

Mr. **Carlucci**. I think that there will be a reduction in end strength, but here you have to take into account that there are other high priority needs. Should that end strength result in a reduction of total end strength or should it be allocated to other high priority needs within existing end strength. That is the choice that has to be made in the 1990-91 budget.

Senator **Warner**. But you will not recoup the dollars associated with. In other words, as I read the GAO report, you are going to take 12,889 military people out to get the $694 million projected savings.

Mr. **Carlucci**. You do recoup the dollars, Senator Warner, in the base closure area, but you may choose to spend those dollars elsewhere in some other high priority area, say manning ships.

Senator **Warner**. In other words maintaining the end strength?

Mr. **Carlucci**. You may choose to do that. You do not have to do it. It is an option.

Senator **Warner**. So what you are saying, the GAO could well be correct, but you may just shift your priorities, continue with your end strength, and then make up that portion of the $694 million elsewhere?

Mr. **Carlucci**. That is correct.

Senator **Warner**. Thank you, Mr. Chairman.

Chairman **Nunn**. Thank you, Senator Warner.

I believe Senator Dixon is next under the early bird rule.

Senator **Dixon**. Mr. Chairman, my distinguished colleague from Nebraska has asked if I would yield to him briefly because he has to go somewhere else. If I could do that and then proceed.

Senator **Exon**. I thank my colleague from Illinois.

Mr. Secretary, welcome. Thank you for being here this morning. I believe I was with you when you first unveiled this to some of us in Congress several months ago. Congratulations. You have done an outstanding job.

My brief question just has to do with where do we go from here. If you were Secretary of Defense and were going to be Secretary of Defense for the next 4 or 8 years, would you think that we should repeat this process the next year or the year after that? This is only the first blush, is it not, in what we should do to streamline our overall military posture and put the money where it will do us the most good?

Mr. **Carlucci**. Thank you, Senator Exon. I think if I were going to be Secretary of Defense I would ask you to revisit the whole issue.

But the Commission itself laid out a number of suggestions for the future. They emphasized that base closures is fundamentally a national security issue and should be the responsibility of the Secretary of Defense. They recommended that he have an advisory commission, and I think that is wise. For example, I think it was very useful to have somebody like Russell Train, the environmental expert, on this Commission because it is an outside perspective that broadens your vision.

But authority ought to be put back in the hands of the Secretary of Defense. The Congress has legislative oversight. The Congress controls the appropriations process. If a year or two from now a future Secretary of Defense decides that he wants to close base X, I think he should have the authority to do that and I think the Congress ought to act expeditiously if it is going to review that authority, not seek to erect a whole series of obstacles in his path, as the Congress has done in the past.

In other words, the process needs to be simplified.

Senator EXON. Thank you very much, Mr. Secretary. You said it well. Thank you again for your great service to the Nation in your position.

I thank my friend from Illinois and yield back to him.

Senator DIXON. Mr. Secretary, frankly I regret to say that there is not a sufficient timeframe to develop much of anything in the course of these proceedings. But I would like to ask you several questions concerning how these decisions were arrived at.

The first is this. I show you the transcripts from the base closing Commission marked Secret, on the closing of Forts Sheridan and Chanute. Mr. Secretary, I have read this. There is nothing secret in here except the names of the individuals on the staff and the Commission that have been censored out of this by black ink so that we cannot know who is responsible for coming to these decisions.

I ask you how in a democratic society like the United States of America we can do this.

Mr. CARLUCCI. I am informed, Senator Dixon, that the transcript is being reviewed now for declassification.

Senator DIXON. Well, let me ask you, Mr. Secretary, when those of us who care a great deal and who are up against an April 15 deadline may acquire that? I have said to the chairman, I have said to the ranking member, I have said to everyone in the Department of Defense that I wanted the information on the staff people who did the work, and I wanted the 45 boxes of work product.

I have been saying that, Mr. Secretary. I am not arguing with you.

Mr. CARLUCCI. I am not there any more, Senator.

Senator DIXON. I know that. I have been asking that, Mr. Secretary, since the report came out and as I sit here today I have nothing and I have been given secret documentation that is an insult to the American taxpayer. There is nothing in here that is secret. It is ridiculous. It is absurd.

I want to ask when I will get an opportunity to get the names of the individuals who did this and the truth?

Mr. CARLUCCI. Well, I am not in charge of the administration of the Department of Defense at the present time, Senator Dixon, so I cannot answer that question. But I do find myself wondering, in all candor, why the names of the individuals are so essential. It is the points they were making that ought to be taken into account, the judgments that go into the process that I would think would be of interest to you.

Senator DIXON. Could I interrupt you? Put the chart up, Laura. I want to show the members on this committee, the findings on Air

Force training bases by virtue of which Chanute was closed. They looked at Lowry, Goodfellow, Keesler, Lackland and Chanute and they used a point system. The point system, Mr. Secretary, is flawed. We have analyzed it. On the basis of correcting bachelor housing alone Chanute would gain 43 points and if the entire process is corrected, Chanute would be tied with Lowry in first place.

As a matter of fact, when you read this secret report they spent more time talking about closing Lowry, which ended up first, than anybody.

The point is this. I have two men from the Attorney General's Office in the back of this room—these are the two assistant attorney generals from Illinois. We are going to file a law suit about this and we would like to know what the record shows, Mr. Secretary. How did they find these numbers?

How did Chanute come in last in a flawed point system? I cannot question anybody. You understand I know you do not know that, and I say that with due respect to you, sir.

Mr. Carlucci. Under the process that was set up, Senator Dixon, I could not know that. Indeed, the Congress was very insistent that this Commission be independent of the authority of the Secretary of Defense, so I was not part of this process.

I picked the most able people I could find, and I think there is general agreement that they are able and honorable people.

Senator Dixon. I have no doubt that that is true. If I can only find out who they are.

Mr. Carlucci. Well, they will be before you tomorrow, I understand.

Senator Dixon. Will they have a basket over their head or a brown sack, or will there actually be people like you I can see and question?

Mr. Carlucci. I think Senator Ribicoff and Congressman Edwards, if I am not mistaken, Mr. Chairman, will be up here testifying.

Senator Dixon. I know, Mr. Secretary. I know them; they are honorable men. They do not know anything about this. There are a bunch of people whose names I do not know joking about what they would bid on land and stuff—I could read from the secret transcripts, but I guess I would go to jail if I do that.

And there are 20,000 people at Rantoul, 6,000 of which work at Chanute, and the rest that live off it, that are all going to go on relief when this becomes effective April 25, Mr. Secretary, and I cannot ask anybody any questions.

Mr. Carlucci. Well, I think you can certainly. Just like nobody seeks to learn who in a Senator's office, which staff members, have developed a position, the Senator speaks for that office; similarly Senator Ribicoff and Congressman Edwards will speak for the Commission.

I would be very disappointed, quite frankly, Senator Dixon, if this were some kind of an exercise in trying to determine what staff member made what recommendation.

Senator Dixon. Well, Mr. Secretary, how can I determine how a point system—my time has expired, and the people in my State, the 11.5 million, have no answers yet. Mr. Secretary, how can I get a result that is not secret and the names, of individuals who did this, who arrived at a flawed point system.

The General Accounting Office says it does not make sense. It is replete with all kinds of errors. I have respect for you, sir, and for Senator Ribicoff and for Congressman Edwards and probably for the people on the staff. If I can get to the truth.

Now what I said on the floor of the U.S. Senate last year I will say repeatedly again this year. This is obfuscated in such a way that the American people do not know how it happened. They know what I do when I am wrong and they vote against me. I have to account for what I do.

There is no accounting for this, Mr. Secretary.

Mr. CARLUCCI. I quite agree that to some extent we have diluted the accounting mechanisms of Government by appointing a Commission, but given what the Congress has done there was really no other way to do it, Senator Dixon. Accordingly, we structured the Commission with two highly responsible people in charge.

Senator DIXON. I understand that. But what about the 45 boxes of work material? I am a lawyer by trade. I want to look in those boxes and see what you did and what they wrote down on little pieces of paper. I want to know the names of the people who applied the point system that made my base come in fifth but by our point system comes in first.

I want to know how that could be done. I want the courts to decide what was fair.

Mr. CARLUCCI. Senator, I think Senator Ribicoff and Mr. Edwards will be prepared to answer questions on this system and I am sure that they would be prepared to have the staff sit down with your staff and go over it.

Senator DIXON. You think they will do that?

Mr. CARLUCCI. I am disappointed if you think that you are going to achieve something by asking for names, addresses and telephone numbers of staff people because that sounds like there is some kind of punitive exercise under way here, and I hope that is not the case.

Senator DIXON. There is no punitive exercise. All I want to do is find out how they applied the point system.

Mr. CARLUCCI. If it is a question of getting information, that information could be made available. It certainly is being made available to the GAO, if I understand what has happened since I left office.

Senator DIXON. Do you know that nobody came out to Chanute? Do you understand that? Not Mr. Ribicoff, not Mr. Edwards, not you, sir, not any faceless staff person—not one person, not one, came to Chanute and walked onto that base. Do you realize that?

Mr. CARLUCCI. It probably would have been physically impossible for them to visit every base. But once again I cannot speak for every action of the Commission. The Commission, by act of Congress, was given an independent charter. I did not try to influence their deliberations and Senator Warner indicated that the GAO said there had been no political influence.

Had I tried to influence their deliberations, the charge would be made that it was subject to political influence.

Chairman NUNN. Senator Dixon, your time has expired.

Senator Thurmond.

Senator Dɪxᴏɴ. Thank you, Mr. Chairman.

Senator Tʜᴜʀᴍᴏɴᴅ. Thank you, Mr. Chairman.

Secretary Carlucci, I have laryngitis and I hope you can hear me.

Mr. Chairman, I would like to welcome Secretary Carlucci here. He has served our Nation with distinction in a variety of posts, and I am pleased that he has taken the time from his busy schedule to join us here today.

I would like to commend you, Mr. Chairman, and you, Senator Warner, for the outstanding work you have done related to base closures. After we have reviewed the Commission's work I hope that we can proceed with the necessary closures in a timely fashion.

I am no stranger to base closures. Donaldson Air Force Base was closed in South Carolina in the mid-1960s, and while it caused some temporary economic dislocation it is now a thriving industrial park which employs 10 times more people than were employed at the base when it was an air base. Of course, this would not be true at all bases.

Mr. Chairman, I hope that the Department of Defense and the Congress will do everything possible to smooth these transitions that will take place if Congress does not pass the resolution of disapproval, and I predict they will not.

Furthermore, I would like to commend Senator Ribicoff and Representative Edwards and the members of the Commission for the good job they did. As a whole, I think they did a very fine and outstanding job. I think it will be in the interest of our country and in the interest of our economy and in the interest of defense in the end that the report be approved.

Mr. Secretary, I just have two very brief questions. In your opinion, could more bases have been closed if the timeframe for achieving savings was 10 years instead of 6 years?

Mr. Cᴀʀʟᴜᴄᴄɪ. Yes, sir. I think more could have been closed with a 10-year timeframe. It was essentially a judgment call to make it a 6-year timeframe. It is done. The legislation is passed. I suggest we go forward and put the authority back in the hands of the Secretary of Defense if he would like to close more bases.

Senator Tʜᴜʀᴍᴏɴᴅ. Would it be your suggestion that steps be taken before the 6 years to maybe begin closing other bases, or do you think we ought to wait 6 years before any further action is taken?

Mr. Cᴀʀʟᴜᴄᴄɪ. I would certainly not reopen the deliberations of this Commission, Senator Thurmond. The Commission was structured, basically at the insistence of the Congress, on an all-or-nothing basis.

I think it is important to go forward. This does not mean that there will not be some injustices done. In any mechanism like this there are bound to be some small errors and some injustices. But the overall needs of the Nation I think will outweigh those inequities.

Rather than look at payback periods, I would ask the Secretary of Defense to conduct ongoing studies. I would ask this committee to supervise the Secretary's ongoing studies and encourage him to close bases whenever he thinks that their military value has deteriorated to the point where there can be savings without harm to our military establishments.

If the committee wishes, in terms of report language, to suggest a 10-year payback period as preferable to a 6-year payback period, I do not think the Secretary of Defense would have a lot of trouble with that.

Senator THURMOND. Mr. Secretary, should the Department of Defense undertake force structure cuts in the next few years, would you envision the need to close more bases?

Mr. CARLUCCI. Probably, Senator Thurmond, since the force structure, particularly in the Army, would entail taking down some units, and that would probably require closing of bases. Yes, if there are force structure cuts, I would anticipate that you would have the opportunity to close some more bases.

Senator THURMOND. Again, Mr. Secretary, I want to commend you for your outstanding service to this Nation in many capacities, especially as Secretary of Defense.

Mr. CARLUCCI. Thank you, Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

Chairman NUNN. Thank you, Senator Thurmond. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Secretary, I lack both the passion of my friend from Illinois and the posse that he has brought with him. [Laughter.]

I share his views. Like my friend from Illinois, and several others, I supported this Commission in concept; but I did not appreciate the fact, however, that it could somehow turn into a star chamber procedure rather than work as an open and public commission. I recognize that the Commission was highly independent, Mr. Secretary, but there has got to be a rationale and a reason for its decisions. A line of reasoning has to be presented to the American people, the affected communities, and their elected representatives.

Frankly, Mr. Secretary, so far I have not been able to obtain anything like the documentation from the Commission that would provide us with the information that I think people deserve. It has become a question of fairness. When people are affected by an action of their government—whether it be in the form of a base closing, a program reduction, or anything else—they have the right to know what procedures and rationale were used in arriving at that determination.

Mr. Secretary, I understand there were time constraints involved here, and that things had to be achieved by a certain date. I understand that there could not be visits to all of the bases that were under consideration. I understand that things had to be done in a hurried fashion, to say the least. Informal conversations I have had with people who were at the Commission's sessions indicate that things would be flashed on the screen for discussion and that the material for the next decision would be flashed on the screen before decisions were made on the last. Some of that is understandable, given the time constraints under which they were operating, and clearly previous studies had been made as regards many of these bases.

But up to this point—and it is my understanding we are going to have a hearing tomorrow afternoon with the Commissioners—I have been unable to obtain answers to basic questions as to what went into this decisionmaking process. I believe that I have an obligation to the people that I represent to at least provide them with the information that is necessary for them to understand the decisions that have been taken, further if that information is flawed then I have an obligation to go back and review it, and seek suitable changes.

Am I saying the whole report should be dismissed and that we cannot then get a single base closed? I do not think so. I am sure that many of the decisions that were made by the Commission were valid. But we must have proper recordkeeping. We cannot rely on a cost analysis job which some people tell me was done on an 11-year cost analysis basis rather than 6. We cannot accept a situation where no person we have been able to identify in the U.S. Army can tell us who did the cost analysis. We cannot accept a situation where we cannot find proper criteria for how the savings were measured, any real explanation of when manpower cuts are assumed, and any estimate of the community impact costs, environmental savings, et cetera.

I am sure I am beating up on the wrong person here Mr. Secretary; and I guess I will have to repeat this tomorrow. Nevertheless the reason why my friend from Illinois and I and others are upset is that the Commission's work is clouded in a cloak of secrecy which frankly is in direct contradiction to the procedure which I believed that this Commission would use.

I also find it interesting that the preliminary GAO report says that they identified errors in the data and formula used in the cost models but that the errors may not be of sufficient magnitude to affect the payback period for the bases. Maybe not. Maybe so. The cost savings projected to result from the proposed closures do not consider economic impact costs such as expenditures for welfare, unemployment compensation, community adjustment assistance and mortgage assistance, et cetera.

Mr. Secretary, we are dealing with people here. We are dealing with people in communities. We are not dealing with demolition of a building or bulldozing some facility or hangar or something. We are talking about people that we are moving from one part of the country to the other. It is a very painful experience for these people, who have grown up and are raising their children in these communities.

I at least owe them the absolute minimum of providing them with the rationale and the information that is used, and I think frankly the overwhelmingly majority of these people that are going to be subjected to this hardship would understand it and accept it—many would not—if we could show them the case that is made for this decision.

I would appreciate it, Mr. Secretary—and I share the view of all of my colleagues about the outstanding job that you have done—if you would help us in providing this information to the people that we are elected to represent.

Thank you, Mr. Chairman. Could I have time for a response from Secretary Carlucci?

Chairman NUNN. Yes.

Mr. CARLUCCI. Certainly I would agree, Senator McCain, that the rationale ought to be set forth, but at the same time I would argue very strongly that just as you protect your staff, the staff of the Commission should be protected from any kind of political abuse in this process. They made honest decisions. They gave honest advice.

So what you need to look at is the analysis, not the people. And the analysis ought to be made available either through the GAO or directly. I think we are getting into a situation where you may well have individual Senators duplicating what the GAO is doing, and that sometimes gets confusing.

You mentioned such costs as welfare, food stamps. They are costs to the individual. I think the point the Commission was trying to make is that in the overall calculation of cost effectiveness and military value these are marginal, while they are important to the individual, in the overall calculation they are marginal. Your large cost is in the construction of new facilities, moving costs, the personnel savings—those kinds of things.

I would be glad to do whatever I can to see that the information becomes available, but, as you know, my influence these day is limited.

Senator MCCAIN. I would just like to say, Mr. Chairman, speaking for myself and my friend from Illinois, we have no desire, obviously, to seek personal retribution against anyone.

Senator DIXON. Absolutely not. We just want to know the facts.

Senator MCCAIN. At the same time, we feel that if that process was flawed, we should find some vehicle to correct any wrong decision that was made.

Thank you, Mr. Chairman.

Chairman NUNN. Thank you, Senator McCain.

Senator Gorton.

Senator GORTON. I need to start with a perhaps only slightly facetious remark to my friend from Illinois that a long time ago, at the age of 18 in the year 1946, I was sent on a long journey from my home in Evanston, IL, to Fort Sheridan to clean latrines and wait for an assignment to basic training and later that summer came back to Chanute Air Force Base, then the Army air base, to be taught to be a weather observer, and I was firmly in favor of the total closure of both of them. [Laughter.]

Senator DIXON. I can relate to that.

Senator GORTON. Without making any comments on the validity of this report here.

I simply would like to go back to some of the comments the chairman made and thank you, Secretary Carlucci, both for your support last year when I was not here of the concept and the methods by which that concept was implemented in solving a problem which has been an increasing problem for the Department of Defense, and which Congress quite obviously could not solve on its own, by making the kind of value judgments which have been debated here this morning.

Obviously from a purely parochial point of view I have a much milder response than either Senators Dixon or McCain. In a very narrow sense my State is a net gainer. I lose the convenience of using the exchange and the commissary at Sand Point. Everett is further away from my home. But the decision there at least is an overwhelmingly logical one from the point of view of the way in which military installations ought to be run.

Beyond that I am not enough of an expert to critique one way or another individual choices of the Commission. You have quite rightly pointed out that it would have been entirely wrong for you to have participated in this initial decisionmaking process or even the setting of the rules by which those decisions were made.

You have a yes or no answer to exercise with respect to the entire report. In my opinion you made the correct answer, and I hope that you are upheld by Congress.

That is not to criticize either of these other Senators for wanting to be able to assure themselves in the best possible fashion that these decisions were made in an objective fashion, and obviously it is other witnesses who will be in a position to satisfy them and not you.

But if I can take this opportunity, since we did not overlap in the position which you recently held, to congratulate you not only on this but on what I considered to be a magnificent management of the Department of Defense and the very difficult decisions in the highest tradition of Government service.

I would like the record to show that this Senator at least greatly appreciated the services which you have rendered to your country as Secretary of Defense.

Mr. CARLUCCI. Thank you, Senator Gorton. It is a pleasure to see you back in the Senate.

Chairman NUNN. Senator Dixon, I think we are back to you.

Senator DIXON. Could I get a couple of things on the record, Mr. Secretary. May I ask you this? In your opinion, if a base was recommended for closure based on inaccurate information, do you believe that that base ought to be closed?

Mr. CARLUCCI. Well, are you talking about generally or under the existing statutes, Senator Dixon?

Senator DIXON. Under the existing imperatives of the legislation passed.

Mr. CARLUCCI. Then you have to describe the tradeoffs. You cannot just look at it in terms of one base. You have to say is it worth keeping all the other bases open so that this mistake can be corrected. And given that value judgment that was imposed on the administration by the Congress in most cases the answer would be no, unless there is some absolutely compelling requirements.

To keep 86 bases open to correct an error in calculation or even in judgment on one particular base is a very heavy price to pay. On the other hand, if we are willing to give the authority back to the Secretary of Defense, then clearly if he makes a mistake a base should not be closed.

Senator DIXON. Well, let us take the situation that I cited. You are familiar with this, and I have no case to make against any base on here—you understand that. But they used a point system for Lowrey, Goodfellow, Keesler, Lackland and Chanute.

Now all of this was very close I might say. Chanute was rated last with 275, Lackland second-last with 300, and then Keesler with 325, Goodfellow and Lowrey with 350. And the fact is that our evaluation shows that by any fair criteria or application of the standards employed, as well as we can reverse engineer this—OK, they have told us nothing there, you understand; we have to take everything that we find by looking at what we can find to reverse engineer what happened and figure out how they did it—but if we have it correct, by the point system they used Chanute does not come in last.

Mr. CARLUCCI. I cannot comment on that. I did not go through that point system.

Senator DIXON. But I give you the hypothetical of assuming the correctness of what I say. If in fact they were going to close one and Chanute was not last, then I ask you under the imperatives of the legislation passed and the directions to the staff and what they formulated for their system whether that is an appropriate result.

Mr. CARLUCCI. Accepting your hypothetical, which I am not in a position to accept or reject, I would like to correct the error, but, given the terms of the statute the price of correcting the error, in terms of savings, overall savings, to the taxpayer is very high. And while I would have to know more about the particular circumstances at Chanute in most cases I would have to come down on the side of saying go ahead and close the base.

Let me give you a specific example that came to me just before I made my decision. The Commission recommended that ships being homeported I guess in San Francisco be homeported in Hawaii. I thought to myself, well, getting a commission into the business of moving ships around is in principle at least undesirable. That should be the authority of the Secretary of Defense upon advice of the Joint Chiefs and the Secretary of the Navy.

On the other hand, I concluded that the value of accepting the Commission's recommendation as a whole in achieving these savings and these realignments in terms of military utility outweighed my concern about who moved ships around, so I accepted that particular deliberation of the Commission.

So the way this is structured it is a question of choices.

Senator DIXON. May I pursue? I understand the time limits, Mr. Chairman, and I have to leave very briefly and I see my distinguished friend from Mississippi, if he would not be too offended——

Senator LOTT. Please proceed.

Senator DIXON. Let us just say this, Mr. Secretary. Listen to this, if you would be so kind, and again I understand and you know my high regard for you personally. This is not criticism of you as an individual.

The General Accounting Office, Chanute Air Force officials, and others who are familiar with Chanute, which of course is in my State and I am familiar with as well, indicate that the base Commission erred in assessing the availability of facilities at the base.

Now listen to this. This Commission said there is a shortage of facilities for training, for administration, for warehousing, for medical and dental care, for bachelor housing, and recreational facilities. On the contrary, these shortages simply do not exist. They are met in every category. Mistakes have been made in this, Mr. Secretary.

Now the Commission even recommended moving the photo interpretation training from Chanute, but, Mr. Secretary, there is no photo interpretation training at Chanute. It does not even exist. I mean, the point is, you understand I am not trying to be difficult I am trying to represent my State.

Here is a situation where no one went there and even looked. Here is a situation where years ago they looked at Chanute before, and my distinguished friend that I served with many years ago in the Illinois legislature, Ed Madigan, happens to be of the opposite political persuasion, a leading Republican on the House side, at that time they made findings and he took it to them and showed them they were flawed. In those days they dropped it.

Now what I am concerned about—Fort Sheridan is another matter; I could elaborate on that—here we see the flaws. We see the mistakes, Mr. Secretary. This is not critical of you. But if the conclusion arrived at is predicated on premises that are flawed, then are we to ask a town—I am talking about a little town of 20,000 people 200 miles from St. Louis, 200 miles from Chicago. The folks that work there live there, and the folks that do not work there live off the folks that work there.

Now that is what I am talking about here. I am talking about American tragedy in that area. See, if it is flawed, Mr. Secretary, are we not entitled to somehow develop that and give these people their day in court? This is America.

Mr. Carlucci. Senator Dixon, I agree with you that Chanute is a more difficult case than Fort Sheridan, and nobody wants to impact adversely on the lives of people, although historically the record will demonstrate that the dislocations resulting from base closures have been greatly exaggerated and the communities have managed to recover very well.

But in a more philosophical vein, I think this is a commentary on the overall legislative process. The fact is that we have made it impossible for a Secretary of Defense to close a base. A base has not been closed since when, 1975, 1976. Hence, the only vehicle seemed to be this all or nothing approach for political reasons.

If we can get back to a more sensible course where we vest the authority in the Secretary of Defense and exercising normal oversight with the Secretary of Defense, then if there are these kinds of errors—and that is a premise that I cannot accept, not having studied it—we can correct the errors.

So I do not think we should blame just this Commission. We should blame the whole process since 1975 or 1976 that got us to this state.

Senator Dixon. If I could just follow up—and I appreciate that the chairman is indulging me, as is my friend from Mississippi—the only final point I make is, see, I do not want names and addresses and telephone numbers to go hurt anybody. Anybody who knows Alan Dixon knows he does not have that kind of a spirit.

There is nothing in my heart that makes me ever want to hurt anybody. Help people; that is my spirit. But what I want to find here, though, is the truth, Mr. Secretary. That is all I ask. Imagine the frustration of a man who loves his people, and is given secret documentation that he cannot even let the lawyers in the back of the room see. See them sitting there? I am not allowed to even let them look at it.

I cannot go ask anybody how they applied a point system that is flawed. I cannot do that. I cannot find the answers. My people think I am an idiot when I go home and say I cannot explain this to you.

Chairman NUNN. Senator Dixon, may I say that——

Senator DIXON. Maybe they are right? [Laughter.]

Chairman NUNN. I did not say that.

Senator DIXON. I saw how you looked, though, Mr. Chairman. [Laughter.]

Chairman NUNN. I cannot remember even thinking that.

Let me just say we are working with the Commission people to try to declassify a large segment of this information, and we also have been given access—and you are right, it is still classified—to the classified material. It is in an annex that is a long distance from here; it is not very convenient. But it is accessible.

So we will work with them. You make a valid point about the fact that this needs to be declassified as much as possible, and I think a great deal of it can be declassified. So I think your point is valid. On that point, we have been working with the Commission on that. We will hear from them again tomorrow afternoon, and we hope to make substantial progress on it so you will be able to get the factual information.

Senator DIXON. Well, I certainly thank the Chair.

See, I would like to know how they did this point system, who figured it out, who applied it, what kind of computer type thing, which I do not understand, did they put it in to get these results? If I could understand that, then we will take our raw material, we will put it in the same computer. I am going to argue with you that it will come back that we are not last.

That is what I am saying here. And that is what our law suit is going to be about eventually. I just want a day in court, Mr. Chairman, for the people of my State.

Chairman NUNN. A very legitimate request.

Senator Lott.

Senator LOTT. Thank you, Mr. Chairman. Secretary Carlucci, we want to thank you for being here this morning.

Mr. CARLUCCI. It is a pleasure to see you here, Senator.

Senator LOTT. And to give us the opportunity to express our views. Yes, it is a different role from what I saw you in last, and also I want to say how much we do appreciate the job you did as Secretary of Defense.

Mr. CARLUCCI. Thank you.

Senator LOTT. We are very proud of you and commend you for your efforts while you were there.

Senator DIXON. If my friend from Mississippi will yield to me, believe it or not I share that completely.

Senator LOTT. Excellent. I would be glad to yield further if you would like to expand on that.

I would like to ask you just a couple of questions. I know you touched on at least one of them during your opening statement. One thing that kind of bothers me about this Commission recommendation is that the short-term savings are minimal at the least. Can you give me some idea in the next year to 18 months what kind of savings we are talking about and then what is the estimated, as the best you can determine it, long-term savings from this Commission report?

Mr. Carlucci. Well, the Commission calculated some $693 million per year annual savings, which on a discounted cash flow basis yields, over a 20-year period, a net present value of $5.6 billion. Now that is using a 6-year payback period.

And before you came in, Senator Lott, I indicated that obviously had you used a different payback period—7 years, 10 years—you could have brought about more savings.

Senator Lott. In the first year or two what kind of savings are we talking about?

Mr. Carlucci. Well, you are probably talking about costs more than savings in the first 2 years. That is why I put $1 billion or I recommended and President Reagan accepted putting $1 billion in the budget to begin the revolving fund for the first 2 years.

In addition, we would need to put some money in in fiscal year 1989 to begin the planning process. The key to success here is long-range planning. We need to start that right now. You need to start building the facilities at the new base before you close the old base. So you probably would not begin to get real savings flowing into the revolving fund until fiscal year 1992, in all likelihood.

Senator Lott. I guess that would always be the case, though.

Mr. Carlucci. Yes.

Senator Lott. You have closure expenditures.

Mr. Carlucci. This was not a short-term exercise. It was not done to help me with the budget, if that is your question. It made my budget life more difficult because I had to come up with another $1 billion.

Senator Lott. It was not done to help you with your budget, but was done primarily to help us with our overall budget problems.

Mr. Carlucci. It will help you a substantial amount, beginning in 1992.

Senator Lott. I understand that you commented on foreign base closures in your opening statement. You say that there are adequate procedures in place now to look at that on a continuing basis. I believe you mentioned that there had been some closures.

Mr. Carlucci. Right.

Senator Lott. But not very many.

Mr. Carlucci. Oh, I do not know. If you take since World War II our base structure overseas has come down by about a third. I asked this morning and got some figures on just the Army. The Army since 1985 has closed some 19 bases overseas.

Senator Lott. Since when?

Mr. Carlucci. Since 1985. And they are planning to close some 12 more by 1993. In addition, there are 20 more under consideration for closure. That is just the Army alone, although they probably have more bases than any of the other services.[1] But the Air Force would have some bases, for example the GLCM missile bases.

Of course you have to bear in mind that we do not have the same political impediments to closing bases overseas that we have here.

Senator Lott. You do have some political impediments to making some of those closures over there. They are not congresachieving full parity with the states over a period no longer than four years in the following programs: Nutrition Assistance Program (NAP), Aid to Families with Dependent Children (AFDC), and Medicaid, and over a period no longer than eight years in the Supplemental Security Income Program (SSI), as is currently enjoyed with regard to other Federal programs.

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[1] Army overseas base closure figures are for Europe only.

8. PROTECTION OF WORKERS.

Delegate to the Labor Relations Board of Puerto Rico all the functions presently exercised by the National Labor Relations Board, regarding labor relations in the Commonwealth of Puerto Rico.

Puerto Rico shall continue to have exclusive jurisdiction to legislate employee benefits, including but not limited to Christmas bonuses, sick and vacation pay, and workman's compensation, excluding the federal minimum wage and overtime pay legislation which shall continue to apply.

9. PUERTO RICAN PARTICIPATION IN FEDERAL APPOINTMENTS.

Assure the participation of Puerto Rico in designating candidates for the highest ranking Federal appointments serving in Puerto Rico, including Presidential appointments subject to Senate confirmation.

10. REPRESENTATION IN THE SENATE.

Secure representation of Puerto Rico's interest in the United States Senate by a second Resident Commissioner.

11. FEDERAL JUDICIARY

(a) PRIMARY JURISDICTION OF PUERTO RICO COURTS.—Assure that Federal courts abstain from construing an unconstrued Puerto Rico statute or regulation or deciding an undecided point of substantive Puerto Rico nonstatutory law without first giving the courts of Puerto Rico an opportunity to construe such statute or regulation or to rule upon such point of Puerto Rico law, which constructions shall be binding on the Federal courts.

(b) USE OF SPANISH LANGUAGE. Enact legislation requiring the United States District Court for Puerto Rico to conduct its proceedings in the Spanish language, upon the request of any party to the proceeding.

(c) Enact a statutory provision for the certification to the District of Columbia Court of Appeals of the actions or controversies arising under, and involving the Puerto Rico Federal Relations Act, as amended by this Act, and for the transfer by the Commonwealth of Puerto Rico, its departments, agencies and instrumentalities, as well as officials and agents, in both their official and personal capacity, of any action brought against them from the District Court for Puerto Rico to the District Court for the District of Columbia.

12. PASSPORTS.

(a) RESTORING PUERTO RICO'S ISSUANCE OF U.S. PASSPORTS. Restore Puerto Rico's authority to issue U.S. passports.

(b) SPECIAL TEMPORARY VISIT VISAS. Consistent with prohibitions imposed by the President on the entry of aliens from specified countries, authorize the Government of Puerto Rico to secure Puerto Rico-only temporary visas, for a period not to exceed thirty days, for nonresident aliens invited by the Government of the Commonwealth of Puerto Rico. The District Office for Puerto Rico of the Immigration and Naturalization Service shall issue these special temporary visit visas, as well as other entry visas.

(c) The District Office for Puerto Rico of the Immigration and Nationality Service shall issue the special temporary visit visas, as well as other entry visas.

13. LAW ENFORCEMENT.

Amend Federal law to authorize the Commonwealth to supplement United States efforts to partrol Puerto Rico's borders and make them secure against illegal traffic in drugs and aliens, including joint enforcement of relevant Federal laws.

14. HISTORIC SITES AND CONSERVATION LANDS

Title to lands and properties acquired by the United States under the cession of Spain in the Treaty of Paris entered into on December 10, 1898, as well as of ownership of the Caribbean National Forest, shall be transferred to the Commonwealth of Puerto Rico. Continued use and administration by the Federal Government of these lands and properties may be negotiated with the Commonwealth of Puerto Rico.

15. COMMUNITY VALUES.

Authorize the Governor of the Commonwealth of Puerto Rico to grant antitrust exemptions for voluntary joint efforts by broadcasters to foster local programming and to foster community and cultural values, including the possible adoption of codes limiting the violence, pornography, and substance-abuse depicted in broadcast programming.

16. ASSUMPTION OF BUDGETARY RESPONSIBILITIES AND TRANSFER OF FEDERAL FUNCTIONS.

The Commonwealth of Puerto Rico shall assume the expenses inherent in all governmental authority transferred pursuant to this Act. The Government of the United States, or any agency thereof, may from time to time delegate to the Commonwealth of Puerto Rico the total or partial performance of functions vested in the United States, including the administration of such Federal laws and programs on the island, as may be mutually agreed.

SUBPART 6. FUTURE ENHANCEMENTS.

The enhancements to the Commonwealth relationship resulting from this Act shall form part of the Compact entered upon the Congress and the People of Puerto Rico in 1952. It may be amended in the same manner as entered upon in order to provide for the continuing enhancement of the Commonwealth relationship.

(c) DATE OF REFERENDUM.—The first referendum shall occur upon the call of the Governor, and during calendar year 1991.

(d) RETURNS OF REFERENDUM.—The returns of the referendum held under this Act shall be made to the Governor of Puerto Rico, who shall cause them to be canvassed in the manner provided by law for the canvass of votes cast in general elections in the Commonwealth of Puerto Rico. If there is not a majority in favor of one of the three options, then there shall be, upon the call of the Governor, and during calendar year 1991, a runoff referendum between the two status options which had received the largest number of votes. The Governor shall certify to the President and to the Congress of the United States that decision of the people of Puerto Rico which received a majority of the votes cast.

(e) APPLICABLE ELECTION LAWS.—The election laws of the Commonwealth of Puerto Rico shall apply to the referendum held under this Act.

SEC. 3. NEGOTIATIONS TO DEVELOP LEGISLATION BASED ON REFERENDUM.

(a) NEGOTIATIONS.—Following certification by the Governor as provided in section 2(d), then the process, involving representatives of the principal political party representing the status option selected, and in full consultation with the other two principal political parties, shall begin to develop implementing legislation encompassed within the principles as set forth in section 2(b), and in consultation with the Committee on Energy and Natural Resources of the United States Senate and the appropriate committees of jurisdiction in the United States House of Representatives. Such legislation shall, upon enactment, authorize a further referendum of the people of Puerto Rico to approve or disapprove the selected status as defined in the legislation. A change of status shall not be effective unless or until approved in such a referendum.

(b) TIME LIMIT.—The second referendum to approve or disapprove the selected status as defined in the legislation developed under this section shall occur no later than the end of the Congress which is in session on the fourth anniversary of the date of the Governor's certification provided for under section 2(d), or as may be otherwise provided in such legislation.

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II

101st CONGRESS
1st Session

S. 712

To provide for a referendum on the political status of Puerto Rico.

IN THE SENATE OF THE UNITED STATES

April 5 (legislative day, January 3), 1989

Mr. Johnston (for himself, Mr. McClure, and Mr. Simon) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To provide for a referendum on the political status of Puerto Rico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) the United States of America recognizes the principle of self-determination and other applicable principles of international law with respect to Puerto Rico; and

(2) the United States is committed to a process of consultation and negotiation with the people of Puerto

★(Star Print)

Rico leading to a referendum on the issue of political status to be conducted in a fair and equitable manner.

TITLE I

SEC. 2. REFERENDUM.

(a) In General.—An island-wide referendum shall be held in Puerto Rico in which qualified voters of the Commonwealth of Puerto Rico shall be presented a choice of three status options for Puerto Rico as follows:

(1) statehood;

(2) independence; or

(3) commonwealth

as set forth in titles II, III, and IV of this Act.

(b) Date of Referendum.—The first referendum shall occur on , 1991, or on a date as may be mutually agreed by the three principal political parties, and during the summer of calendar year 1991.

(c) Returns of Referendum.—The returns of the referendum held under this Act shall be made to the Governor of Puerto Rico, who shall cause them to be canvassed in the manner provided by law for the canvass of votes cast in general elections in the Commonwealth of Puerto Rico. If there is not a majority in favor of one of the three options, then there shall be, on , 1991, or on a date as may be mutually agreed by the three principal political parties, and during the summer of calendar year 1991, a runoff referendum between the two status options which had received the largest number of votes. Such referendum shall also include an option of "None of the Above". The Governor shall certify to the President and to the Congress of the United States that decision of the people of Puerto Rico which received a majority of the votes cast, if a majority is obtained.

(d) APPLICABLE ELECTION LAWS.—The election laws of the Commonwealth of Puerto Rico shall apply to the referendum held under this Act.

(e) Upon the effective date of this Act, the status option which has been certified by the Governor pursuant to subsection (c), shall go into effect in accordance with the appropriate title of this Act.

TITLE II—STATEHOOD

Whereas: Upon admission as a State, Puerto Rico would cease being a territory of the United States.

Whereas: The Commonwealth of Puerto Rico would be admitted as a sovereign State of the Union, with its current Constitution, on an equal footing and in true permanent union with the other fifty States.

Whereas: The new State of Puerto Rico shall be known as the Commonwealth of Puerto Rico; in Spanish it shall be known as "Estado Soberano de Puerto Rico".

Whereas: Admission to the Union has historically been a flexible and varied process which has been adapted to the individual circumstances of each new State.

Whereas: Congress, has the constitutional power to facilitate the admission of new States.

Whereas Congress is willing to provide for a smooth process of adjustment from the tax structure of the territorial status to the Federal fiscal system.

Whereas: The Commonwealth of Puerto Rico assured of its reserved state right under the Constitution to continue to maintain both Spanish and English as its official languages, as well as of its right to preserve and enhance its particular cultural characteristics.

Whereas: Statehood creates the only permanent union with the United States that is consistent with the "more perfect union" of equal States established by the United States Constitution.

Whereas: Statehood entails fundamental political and economic betterment for the Commonwealth of Puerto Rico.

Whereas: Statehood entails economic self-reliance and social justice, including parity for its residents in those aspects of Federal legislation that cover the residents of the several States.

Whereas: Statehood means political equality, and, specifically, the right to participate in the process of election of the President and Vice-President of the United States as well as the right to elect two United States Senators and the corresponding number of Members of the United States House of Representatives.

Whereas: Statehood means that all benefits and protections of the United States Constitution would be fully bestowed on the People of the Commonwealth of Puerto Rico together with the guarantee of full protection by the Federal judicial system.

Whereas: Statehood entails the immediate full extension of Federal entitlements and legislation providing parity for the residents of Puerto Rico in all Federal programs.

Whereas: The Commonwealth will assume all responsibilities of a State of the Union.

Whereas: Statehood is a political formula recognized by the international community through Resolution 1541 (XV) of the General Assembly of the United Nations and through Resolution 1469 (XIV) of that body, which was adopted upon the admission of the new States of Alaska and Hawaii.

Whereas: Statehood embodies the highest degree of autonomy and sovereignty in a true permanent union with the several States.

Therefore: *Be it resolved:*

SEC. 2. Subject to the provisions of this Act, and upon issuance of the proclamation required by section 7 of this

Act, the Commonwealth of Puerto Rico (hereinafter referred to also as "the State") is declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respects whatever, in compliance with the democratic mandate of the plebiscite held on   for the resolution of Puerto Rico's final political status. The Constitution adopted by a vote of the People of Puerto Rico in the election held on June 4, 1951, has been found by Congress to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and was accepted, ratified, and confirmed, through Public Law 447 of the 82nd Congress, March 3, 1952.

CONSTITUTION

SEC. 3. The Constitution of the Commonwealth of Puerto Rico shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. The current Constitution of the Commonwealth of Puerto Rico is hereby accepted as the constitution of the State.

TERRITORY AND BOUNDARIES

SEC. 4. Subject to the provisions of this section, the State shall consist of all of the territory, together with the territorial waters, of the Commonwealth of Puerto Rico.

STATE TITLE TO LANDS AND PROPERTY

SEC. 5. (a) The State and its political subdivisions shall have and retain title to all property, real and personal, which it currently holds.

(b) Any lands and other properties that, as of the date of admission of Puerto Rico into the Union, are set aside pursuant to law for the use of the United States under any (A) Act of Congress, (B) Executive order, (C) proclamation of the President, or (D) proclamation of the Governor of the Commonwealth of Puerto Rico, shall remain the property of the United States; except that the Commonwealth of Puerto Rico (the State) shall have the exclusive right to explore, exploit, lease, possess and use all seabed, natural, and mineral resources lying within the two hundred mile economic zone continental shelf boundary around the waters of the Archipelago of Puerto Rico; however, all other rights of sovereignty in regards to the continental shelf and waters, shall belong to the United States except those already vested in Puerto Rico.

(c) Not later than five years after the date of admission of the Commonwealth of Puerto Rico as a State of the Union, each Federal agency having control over any land or property that is retained by the United States pursuant to this section shall submit a report to the President and the Congress concerning the need for such land or property. If the President determines that any such land or property is no longer needed by the Federal Government, it shall be forthwith conveyed to the Commonwealth of Puerto Rico.

(d) All laws of the United States reserving to the United States the free use or enjoyment of property which vests in or is conveyed to the Commonwealth of Puerto Rico or its political subdivisions pursuant to this section or reserving the right to alter, amend, or repeal laws relating thereto, shall cease to be effective upon the admission of the State into the Union.

COMPACT WITH THE UNITED STATES: CLAIMS TO FEDERAL LANDS AND PROPERTY

SEC. 6. (a) As a compact with the United States, the Commonwealth and its people recognize all rights and titles to any lands or other property not granted or conferred to the Commonwealth or its political subdivisions by or under the authority of this Act, the right or title to which is now held by the United States or subject to disposition by the United States.

(b)(1) Nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by applicable laws of the United States.

(2) Nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any applicable law authorizes, establishes, recognizes, or

confirms the validity or invalidity of any such claim, and the determination of the applicability of any law to any such claim shall be unaffected by anything in this Act.

(c) No taxes shall be imposed by the State upon any lands or other property now owned or hereafter acquired by the United States.

(d) Nothwithstanding any other provisions of this Act or any other provision of law, in compensation for the lands now held by the United States, the Congress shall appropriate Federal payments to be assigned to the Commonwealth of Puerto Rico, in the amount of annually, during the next years, for the sole purpose of assisting the State in the payment of its present public debt and liabilities.

ELECTIONS AND ADMISSION REFERENDUM

SEC. 7. (a)(1) Not more than sixty days after the date of certification by the Governor of the Commonwealth of Puerto Rico as provided by this Act, the President of the United States shall certify the admission of Puerto Rico into the Union to the Governor of the Commonwealth of Puerto Rico. Not more than thirty days after such certification, the Governor of the Commonwealth of Puerto Rico shall issue a proclamation for the election of two United States Senators and the corresponding number of the United States Representatives in Congress as provided in this Act. The Governor of the State shall certify the election of the Senators and Representatives in the manner required by law. The Senators and Representatives elected shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of the other States in the Congress of the United States. The office of Resident Commissioner shall cease to exist upon the swearing in of the first Member of the House so elected.

(2) In the first election of Senators from the State (pursuant to section 7(a)(1)) the two senatorial offices shall be separately identified and designated, and no person may be a candidate for both offices. No such identification or designation of either of the two senatorial officers shall refer to or be taken to refer to the terms of such offices, or in any way impair the privilege of the Senate to determine the class to which each of the Senators elected shall be assigned.

(b) Election returns shall be made and certified in such manner as provided by the electoral laws of Puerto Rico and in such a manner as the Commonwealth of Puerto Rico may prescribe. The Governor of the Commonwealth of Puerto Rico shall certify the results of such elections to the President of the United States.

(2) The constitution of the Commonwealth of Puerto Rico, ratified by the people at the referendum held on June 4, 1951, shall become the Constitution of the State of Puerto

Rico. The new State of Puerto Rico shall be known as The Commonweath of Puerto Rico.

(3) Any legal dispute or controversy arising out of the electoral processes conducted under this act shall be adjudicated by the United States District Court for the District of Puerto Rico, and the Appellate Federal Court System. The Courts of the Commonwealth of Puerto Rico shall not have jurisdiction to entertain any suit, appeal, writ of revision or legal action, arising out of these elections, plebiscites and referendums.

(4) The individuals holding legislative, executive, and judicial offices of the Commonwealth of Puerto Rico, shall continue to discharge the duties of their respective offices. Upon the issuance of the proclamation by the President of the United States and the admission of the Commonwealth of Puerto Rico as a State of the Union, the officers elected or appointed under the provisions of the constitution and laws of the Commonwealth shall proceed to exercise all the functions pertaining to their offices in, under, or by authority of the government of the States, as provided by the constitution and laws of the State.

SEC. 8. The Commonwealth of Puerto Rico upon its admission into the Union shall be entitled to Representatives, until the taking effect of the next reapportionment, and such Representatives shall be in addition to the membership of the House of Representatives as now prescribed by law.

LAWS IN EFFECT

SEC. 9. Upon admission of the Commonwealth of Puerto Rico into the Union, all of the territorial laws then in force in the Commonwealth of Puerto Rico shall be and continue in force and effect throughout the State, until amended, modified or repealed by the Commonwealth. All of the laws of the United States shall have the same force and effect within the State as elsewhere in the United States.

CONTINUATION OF SUITS

SEC. 10. (a) No writ, action, indictment, cause, or proceeding pending in any court of the Commonwealth of Puerto Rico, shall abate by reason of the admission of the Commonwealth of Puerto Rico into the Union, but shall proceed within such appropriate State courts as are now established under the Constitution of the Commonwealth, or shall continue in the United States District Court for the District of Puerto Rico, as the nature of the case may require.

(b) All civil causes of action and all criminal offenses, which shall have arisen or been committed prior to the admission of the Commonwealth, but as to which no writ, action, indictment, or proceeding shall be pending at the date of such admission, shall be subject to prosecution in the appropiate State courts or in the United States District Court for the District of Puerto Rico in like manner, to the same extent, and with like right of appellate review, as if such State had been created and such State courts had been established prior to the accrual of such causes of action or the commission of such offenses. The admission of the State shall effect no change in the procedural or substantive laws governing causes of action and criminal offenses which shall have arisen or been committed, and any such criminal offenses as shall have been committed against the laws of the Commonwealth of Puerto Rico, shall be tried and punished by the appropriate courts of the State, and any such criminal offenses as shall been committed against the laws of the United States shall be tried and punished in the United States District Court for the District of Puerto Rico.

APPEALS

SEC. 11. Parties shall have the same rights of judicial review of final decisions of the United States District Court for the District of Puerto Rico or the Supreme Court of the Commonwealth of Puerto Rico, in any case finally decided prior to the admission of the State of Puerto Rico into the Union, whether or not an appeal therefrom shall have been perfected prior to such admission. The United States Court of Appeals for the First Circuit and the Supreme Court of the United States, shall have the same jurisdiction in such cases as by law provided prior to the admission of the State into the Union. Any mandate issued subsequent to the admission of the State, shall be to the United States District Court for the District of Puerto Rico or a court of the State, as appropriate. Parties shall have the same rights of appeal from and appellate review of all orders, judgments, and decrees of the United States District Court for the District of Puerto Rico and of the Supreme Court of Puerto Rico, in any case pending at the time of admission of the State into the Union, and the Supreme Court of the Commonwealth of Puerto Rico and the Supreme Court of the United States shall have the same jurisdiction therein, as by law provided in any case arising subsequent to the admission of the State into the Union.

MILITARY LANDS

SEC. 12. (a) Subject to the subsection (b) and notwithstanding the admission of the Commonwealth of Puerto Rico into the Union, authority is reserved in the United States for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by article I, section 8, clause 17, of the Constitution of the United States, in all cases whatsoever over such tracts or parcels of lands as, immediately prior to the admission of the State, are controlled or owned by the United States and held for defense or Coast Guard purposes.

(b)(1) The Commonwealth of Puerto Rico shall always have the right to serve civil or criminal process within such tracts or parcels of land in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed within the State but outside of such tracts or parcels of land.

(2) The reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over such lands shall not operate to prevent such lands from being a part of the Commonwealth of Puerto Rico, or to prevent the State from exercising over or upon such lands, concurrently with the Federal Government, any jurisdiction which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation or authority.

(3) The power of exclusive legislation shall vest and remain in the United States only so long as the particular tract or parcel of land involved is controlled or owned by the United States and used for defense on Coast Guard purposes, except that the United States shall continue to have sole and exclusive jurisdiction over such military installations as have been or may be determined to be critical areas as designated by the President of the United States or the Secretary of Defense.

UNITED STATES NATIONALITY

SEC. 13. No provision of this Act shall operate to confer United States nationality, to terminate nationality lawfully acquired, or to restore nationality terminated or lost under any law of the United States or under any treaty to which the United States is or was a party.

REPEAL AND AMENDMENT OF INCONSISTENT LAWS

SEC. 14. All Acts or parts of Acts in conflict with the provisions of this Act, whether passed by the Legislature of the Commonwealth of Puerto Rico or by Congress, are hereby repealed or amended to conform with the provisions of this Act.

NATIONAL FEDERAL LANDS AREA

SEC. 15. (a) The Federal Lands reserved for the United States Government referred to in section 4 are those now held by the Federal Government.

ECONOMIC ADJUSTMENT FROM TERRITORY TO STATE

SEC. 16. Congress adopts the following economic provisions to expedite the adjustment of the Commonwealth of Puerto Rico from the tax structure of the territory to the fiscal and economic system of the State.

(a) Provisions of the Internal Revenue Code concerning Federal Income Taxes shall immediately apply to Puerto Rico, provided that the proceeds of said taxes shall be transferred to the Treasury of Puerto Rico in an amount to be diminished by   percent of the monies collected each year for a   year period. Existing income tax laws of the Commonwealth shall stand repealed upon admission of the State.

(b) Provision shall be made by Congress so that economic and fiscal exceptions of the Internal Revenue Code, already granted, such as those allowed under section 936 of said code, shall remain in full effect for years and will be smoothly and gradually phased out thereafter, in such a way as to eliminate the prevalent uncertainty which impairs an orderly planning and which impedes the fulfillment of the job creation requirements for such credit, thus promoting investments and higher rate of employment, which will in turn reduce governmental and individual dependence while enhancing the economy of the State and the fiscal soundness of its government.

(c) Pursuant to Congress, powers under the Constitution, an omnibus act with multiple provisions shall be enacted to ensure that the people of Puerto Rico attain equal social and economic opportunities with the residents of the several States. Said omnibus act shall also provide for measures necessary to assure appropriate continuity in the treatment given to Puerto Rico as a principal coffee producer and in the treatment of alcohol excise taxes; and shall also continue to provide for the transfer to the Treasury of Puerto Rico, for a period of years, of the proceeds of Federal customs and duties levied on imports coming from foreign sources to Puerto Rico.

[Detailed economic provisions, addressing the above proposals among others, will be furnished to the committee as soon as final technical work is completed.]

TERMS AND CONDITIONS

SEC. 17. The Commonwealth of Puerto Rico is assured of its reserved State right under the Constitution to continue to maintain both Spanish and English as its official languages, as well as of its right to preserve and enhance its rich Hispanic cultural heritage. However, all records and proceedings of all agencies, departments, offices and courts of the United States Federal Government operating in Puerto Rico, shall continue to be conducted and kept in the English language as heretofore. The Commonwealth of Puerto Rico's present Official Languages Act, 1 L.P.R.A. 51–55 (Laws of Puerto Rico, 1902), making Spanish and English official State languages is a State prerogative protected by the Constitution of the United States.

SEC. 18. The State shall never enact any law restricting or abridging the right of suffrage on account of race, color, previous condition of servitude, or ability to read, write, speak, and understand any language sufficiently; and the rights, privileges and immunities of citizens of the United States shall be respected in Puerto Rico according to the provisions of paragraph 1 section 2 of article IV of the Constitution of the United States.

TITLE III—INDEPENDENCE

SUBTITLE 1—STATEMENT OF PURPOSES

First: The United States hereby recognizes that Puerto Rico is historically, socially and culturally a Latin American nation which has been under the sovereignty of the United States since 1898.

Second: The United States recognizes Puerto Rico's inalienable right to independence.

Third: In order to best promote Puerto Rico's development according to its needs and resources and within the framework of present day interdependence, the United States recognizes Puerto Rico's sovereignty as a means to provide Puerto Rico with the political powers and the flexibility necessary to achieve this objective.

Fourth: In order to insure lasting friendship, equitable economic relations, and the gradual elimination of the burden which Puerto Rico's extreme economic dependence represents for both nations, the United States declares its intention to guarantee all necessary conditions for a rational and mutually advantageous transition before and after independence.

Fifth: It is the purpose of this title to recognize the independence of Puerto Rico as a sovereign and democratic nation, to provide the conditions necessary for an orderly transition from the present status to independence, and to guarantee the legitimate interests of both Puerto Rico and the United States.

SUBTITLE 2—TRANSITION PROCESS PRIOR TO PROCLAMATION OF INDEPENDENCE

SEC. 2.1. CONSTITUTIONAL CONVENTION.

(a) Should the results of the referendum provided for in title I of this Act favor independence as a status alternative for Puerto Rico, the Legislative Assembly of the Commonwealth of Puerto Rico shall provide for the election of delegates to a Constitutional Convention to formulate and draft a Constitution for the Republic of Puerto Rico. The election of delegates must by held within six months after the celebration of the aforementioned referendum.

(b) Those qualified to vote in the election of delegates to the Constitutional Convention shall be: (1) all persons born and residing in Puerto Rico; (2) all persons residing in Puerto Rico and one of whose parents was born in Puerto Rico; (3) all persons who at the time of the adoption of this Act shall have resided in Puerto Rico for a period of twenty years or more; and (4) all persons who established their residence in Puerto Rico prior to attaining voting age and still reside in Puerto Rico; and (5) spouses of all persons included in (1), (2), (3), and (4) above.

(c) The laws of the Commonwealth of Puerto Rico relating to additional voter qualifications and the electoral process shall apply to this election.

(d) The Constitutional Convention shall meet within three months of the election of delegates at such time and place as the Legislative Assembly of the Commonwealth of Puerto Rico shall determine.

(e) The Constitutional Convention shall exercise jurisdiction over all of the territory of Puerto Rico ceded to the United States by Spain by virtue of the Treaty of Paris the 10th day of December 1898.

SEC. 2.2. CHARACTER OF THE CONSTITUTION.

(a) The Constitutional Convention mandated under the previous section shall formulate and draft a Constitution establishing a republican form of government which shall guarantee the protection of fundamental human rights.

(b) The fundamental human rights guaranteed by the aforementioned Constitution shall include such rights as due process and equal protection under the law, freedom of speech, press, assembly, association, and religion, as well as the rights of the accused, and economic, social and cultural rights such as the right to education, adequate nutrition, health services, adequate housing, and work or employment.

SEC. 2.3. RATIFICATION OF THE CONSTITUTION.

(a) The Constitution elaborated by the Constitutional Convention shall be sumitted to the people of Puerto Rico for its ratification or rejection.

(b) The Legislative Assembly of the Commonwealth of Puerto Rico shall call for a special election for such ratification or rejection, to be held within three months of the adoption of the Constitution elaborated by the Constitutional Convention.

(c) The special election providing all qualified voters the opportunity to cast a vote for or against the proposed Constitution shall be held in the manner prescribed by the Legislative Assembly of the Commonwealth of Puerto Rico.

(d) Those qualified to vote in this election shall be those possessing the qualifications established in section 2.1 of this title.

SEC. 2.4. ELECTION OF OFFICERS OF THE REPUBLIC.

(a) Within thirty days of the ratification of the Constitution as provided for by section 1.3 of this title, the Governor of the Commonwealth of Puerto Rico shall issue a proclamation calling for the election of such officers of the Republic of Puerto Rico as may be required by the ratified Constitution.

(b) The election of officers of the Republic shall be held not later than six months after the date of ratification of the Constitution.

(c) The aforesaid election shall be held in accordance with the procedures and requirements established in the Constitution of the Republic of Puerto Rico.

(d) The Governor of the Commonwealth of Puerto Rico shall certify the results of the election to the President of the United States.

SEC. 2.5. JOINT TRANSITION COMMISSION.

(a) A Joint Transition Commission shall be appointed in equal numbers by the President of the United States and the Constitutional Convention of Puerto Rico as soon as the favorable results for the independence option in the referendum provided for in title I of this Act are announced.

(b) The Joint Transition Commission shall be responsible for expediting the orderly transfer of all functions currently exercised by the Government of the United States in Puerto Rico, or in relation to Puerto Rico; including the recommendation of appropriate legislation.

(c) Any necessary task forces under the aegis of the Joint Transition Commission shall be constituted in the same manner as the Commission.

(d) The Government of the Commonwealth of Puerto Rico and the agencies of the Government of the United States shall collaborate with the Joint Transition Commission and subsequently with the new officers of the Republic of Puerto Rico, to provide for the orderly transfer of the functions of government.

(e) All members representing the Puerto Rican side on the Joint Transition Commission or on any task force shall be bona-fide supporters of Puerto Rican independence.

SEC. 2.6 RESOLUTION OF CONTROVERSIES PRIOR TO INDEPENDENCE.

(a) From the date of the referendum provided for in title I of this Act, and until the date of proclamation of independence, the Supreme Court and all inferior courts of the United States shall have no jurisdiction over any case or controversy arising from the operation of this Act.

(b) Any question arising from the operation of this Act shall be referred to the Joint Transition Commission established in section 2.5 for disposition through negotiation. Should the Commission be unable to reach a negotiated solution to a question, it shall submit all points in question to international arbitration.

SUBTITILE 3—PROCLAMATION OF INDEPENDENCE

SEC. 3.1. PROCLAMATIONS BY THE PRESIDENT OF THE UNITED STATES AND THE HEAD OF STATE OF THE REPUBLIC OF PUERTO RICO.

(a) Not later than one month after the official certification of the elected officers of the Republic of Puerto Rico under section 2.4, the President of the United States shall by proclamation withdraw and surrender all rights of possession, supervision, jurisdiction, control or sovereignty then existing and exercised by the United States over the territory and people of Puerto Rico, and shall furthermore recognize on behalf of the United States of America the independence of the Republic of Puerto Rico and the authority of the government instituted by the People of Puerto Rico under the Constitution of their own adoption. The proclamation shall state that the effective date of withdrawal of the sovereignty of the United States and recognition of independence shall be the same as the date of the proclamation of independence, as provided in subsection (c).

(b) The President of the United States shall forward a copy of the proclamation issued by him to the presiding officer of the Constitutional Convention of Puerto Rico within a week after signature.

(c) Within one week after receiving the presidential proclamation and with the advice of the officer elected as head of state of the Republic, the presiding officer of the Constitutional Convention shall determine the date in which the Government of the Republic shall take office, and shall so notify the Governor of the Commonwealth of Puerto Rico and the President of the United States.

(d) Upon taking office, the head of state of the Republic of Puerto Rico shall immediately issue a proclamation declaring: (1) that Puerto Rico has become a sovereign, independent nation; (2) that the Constitution of the Republic is thenceforth in effect; (3) that the Commonwealth of Puerto Rico and its Government have ceased to exist; and (4) that the Government of the Republic will henceforth exercise its powers and duties under its Constitution.

Subtitle 4—Effects of the Proclamation of Independence

SEC. 4.1. ON LEGAL AND CONSTITUTIONAL PROVISIONS.

(a) Upon the proclamation of independence as provided in this subtitle, and except as otherwise provided in this title or in any separate agreements hereinafterwards concluded between the United States and the Republic of Puerto Rico—

(1) all property, rights and interests which the United States may have acquired over Puerto Rico by virtue of the Treaty of Paris of 1898, and thereafter by cession, purchase, or eminent domain, with the exception of such land and other property, rights, or interests as may have been sold or otherwise legally disposed of prior to the enactment of this Act, shall vest ipso facto on the Republic of Puerto Rico;

(2) all laws of the United States applicable to the Commonwealth of Puerto Rico immediately prior to

the proclamation of independence shall no longer apply in the Republic of Puerto Rico; and

(3) all laws and regulations of the Commonwealth of Puerto Rico in force immediately before the proclamation of independence shall continue in force and shall be read with such modifications, adaptions, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution of the Republic of Puerto Rico until such time as they shall be replaced with the new legislation: *Provided*, That any provisions that may be incompatible with the sovereignty of the Republic of Puerto Rico shall be deemed invalid.

SEC. 4.2. ON JUDICIAL PRONOUNCEMENTS.

(a) The Republic of Puerto Rico shall recognize and give effect to all orders and judgments rendered by United States or Commonwealth courts prior to the proclamation of independence pursuant to the laws of the United States then applicable to the Commonwealth of Puerto Rico.

(b) All judicial proceedings pending in the courts of the Commonwealth of Puerto Rico prior to the proclamation of independence shall be continued in the corresponding courts under the Constitution of the Republic of Puerto Rico.

(c) Upon the proclamation of independence, the judicial power of the United States shall no longer extend to Puerto

Rico. All proceedings pending in the United States District Court for the District of Puerto Rico shall be transferred to the corresponding Puerto Rican courts of competence under the Constitution of the Republic of Puerto Rico for disposition in conformity with laws applicable at the time when the controversy in process arose. All proceedings pending in the United States Court of Appeals for the First Circuit, or in the Supreme Court of the United States, which may have initiated in the courts of the Commonwealth or in the United States District Court for the District of Puerto Rico shall continue until their final disposition and shall be submitted to the competent authority of the Republic of Puerto Rico for proper execution: *Provided,* That neither the United States nor any of its officers is a party, in which case any final judgment shall be properly executed by the competent authority of the United States.

SUBTITLE 5—TRANSITION ASPECTS SUBSEQUENT TO PROCLAMATION OF INDEPENDENCE

SEC. 5.1. CITIZENSHIP AND MIGRATION.

(a) Every person who, having been born in Puerto Rico, is on proclamation of independence a citizen of the United States and a resident of Puerto Rico, shall become a citizen of the Republic of Puerto Rico on that date.

(b) Every person born in Puerto Rico after proclamation of independence, and subject to the jurisdiction thereof, shall be a citizen of the Republic of Puerto Rico.

(c) Every person born in Puerto Rico but not a resident thereof on proclamation of independence shall become a citizen of the Republic of Puerto Rico upon residing for six months and taking the oath of allegiance.

(d) Every person not born in Puerto Rico before or after proclamation of independence, and residing therein, shall become a citizen of the Republic of Puerto Rico if either of his parents becomes a citizen of the Republic of Puerto Rico pursuant to subsections (a), (b), and (c).

(e) Every person not born in Puerto Rico but married to a citizen of the Republic of Puerto Rico before or after proclamation of independence shall become a citizen of the Republic upon residing in Puerto Rico for six months and taking the oath of allegiance.

(f) All other persons not specified in subsections (a), (b), (c), (d), and (e) but residing in Puerto Rico shall be granted citizenship in accordance with the Constitution and laws of the Republic.

(g)(1) Every person who is a citizen of the United States and a citizen of the Republic of Puerto Rico in accordance with subsections (a), (b), (c), (d), (e), and (f) shall retain his United States citizenship and all rights, privileges, benefits and obligations pertaining thereto in an equal footing with all other United States citizens: *Provided,* That while residing in Puerto Rico that person shall not be subject under United States laws to compulsory military registration and service or to any other condition or obligation contrary to the sovereignty of the Republic of Puerto Rico.

(2) Every person specified in subsection (g)(1) shall retain his Puerto Rican citizenship and all rights, privileges and benefits pertaining thereto in an equal footing with all other Puerto Rican citizens, and shall retain all of his obligations as a Puerto Rican citizen, except that while residing in the United States that person shall not be subject under Puerto Rican laws to compulsory military registration and service or to any other condition or obligation contrary to the sovereignty of the United States.

(h) Every citizen of the United States who becomes a citizen of the Republic of Puerto Rico in accordance with subsections (a), (b), (c), (d), (e), and (f), can elect: (1) to relinquish his United States citizenship in accordance with United States laws; or (2) to relinquish his Puerto Rican citizenship in accordance with the laws of the Republic.

(i) United States citizens residing in Puerto Rico, but not citizens thereof shall be entitled to the fundamental rights and freedoms accorded to all persons in Puerto Rico but shall not be eligible for political office and shall not be entitled to vote. They shall also be entitled to be naturalized as citizens of the Republic in accordance with nondiscriminatory laws of the Republic.

(j) Citizens of the Republic of Puerto Rico residing in the United States but not citizens thereof shall be entitled to the fundamental rights and freedoms accorded to all persons in the United States but shall not be eligible for political office and shall not be entitled to vote in the United States. They shall also be entitled to be naturalized as citizens of the United States in accordance with nondiscriminatory laws of the United States.

(k) Citizens of the Republica of Puerto Rico who are not United States citizens may, for a period of twenty-five years after proclamation of independence, enter into, lawfully engage in occupations, and establish residence as immigrants in the United States. These immigrants may be subject to nondiscriminatory limitations as provided for by laws and regulations of the United States.

(l) Every resident of the United States born in Puerto Rico but not a citizen thereof, and his sons and daughters, may enter into, lawfully engage in occupations, and establish residence as immigrants in Puerto Rico subject to nondiscriminatory laws and regulations of the Republic.

(m) Every person lawfully admitted for permanent residence within the United States and who is a resident of

Puerto Rico on proclamation of independence shall continue as resident and shall be entitled to be naturalized as citizen of the Republic of Puerto Rico in accordance with nondiscriminatory laws of the Republic.

SEC. 5.2. DEFENSE.

(a) The UnitedStates shall collaborate with the Republic of Puerto Rico toward the ultimate goal of disarmament, peace, and international relations based on the principles of equality, mutual respect and interdependence. Furthermore, the United States recognizes the right of the People of Puerto Rico to strive toward the total demilitarization of its territory, with the purpose of gearing all its efforts and resources to the goals of economic and social development.

(b) The Republic of Puerto Rico shall be closed to any and all military forces of foreign nations. In furtherance of this policy, and to expedite the orderly and gradual transfer of properties presently under the control of the United States for military purposes in Puerto Rico, the Governments of the United States and the Republic of Puerto Rico shall subscribe a separate agreement for a reasonable and mutually convenient period of transition.

(c) Negotiations leading to the eventual agreement provided in paragraph (b) shall begin in a special task force designated for such purposes by the President of the United States and the Constitutional Convention of Puerto Rico pursuant to section 2.5 of this title. Should this special task, force be unable to reach an agreement prior to the proclamation of independence, the negotiations shall continue between representatives appointed by the United States and the Republic of Puerto Rico, until such time as an agreement may be reached.

(d) The Republic of Puerto Rico shall be a nuclear free zone. The United States and the Republic of Puerto Rico shall adhere and fully comply with the provisions of the Treaty for the Proscription of Nuclear Weapons in Latin America of 1967 (Treaty of Tlatelolco).

(e) The Government of the Republic of Puerto Rico shall, as soon as may be practicable, seek integration into the Inter-American defense system by subscribing the provisions of the Treaty of Mutual Defense of 1948 (Treaty of Rio de Janeiro).

SEC. 5.3. TRADE RELATIONS.

(a) Until proclamation of independence: (1) no trade barriers or quotas of any kind shall be imposed on merchandise and articles going into Puerto Rico from the United States or coming into the United States from Puerto Rico; and (2) trade relations shall be as currently provided by law.

(b) during the twenty years following the proclamation of independence, the United States shall not impose trade barriers or quotas of any kind on merchandise and articles coming into the United States from the Republic of Puerto Rico.

SEC. 5.4. TAXATION.

(a) The tax credit currently allowed under section 936 of the United States Internal Revenue Code shall remain in full effect upon proclamation of independence and during the fifteen years thereafter with respect to income derived by corporations that begin to fulfill or continue to fulfill the current requirements for such credit.

(b) On the tenth year after proclamation of independence, a Joint Commission on Taxation shall be appointed in equal numbers by the President of the United States and the head of state of the Republic of Puerto Rico to study and report on changes to be made, if any, to the tax credit allowed under subsection (a) at the expiration of the fifteen-year period. If no agreement is reached with respect to such changes, then all earning repatriations received by residents of the United States shall be subject to taxation by the United States, beginning on the sixteenth year after the proclamation of independence, at a rate that shall increase on a straight-line basis by 10 percent of the regular United States corporate tax rate each year until it reaches 100 percent of said regular rate in the twenty-fifth year after the proclamation of independence, provided that a tax credit will be allowed on such earning repatriations pursuant to subsection (e). If the regular corporate tax rate of the United States is changed before said twenty-fifth year, the difference between the rate to which the earning repatriations are subject during the year of said change and the new regular rate shall be divided, if the latter is higher, by the number of years remaining from the year which follows the year of said change until said twenty-fifth year, and the result of such division shall constitute the extent to which the rate applicable to the dividends shall increase every year from the year which follows the year of said change until said twenty-fifth year. If the new regular United States corporate tax rate is lower than the rate to which the earning repatriations are subject during the year of said change, then the new lower rate shall immediately apply to such repatriations. No other change shall occur before the expiration of said twenty-fifth year with respect to income derived by companies subject to this subsection.

(c) With respect to income not subject to subsections (a) or (b), the profits of an enterprise of either nation shall be taxable only on the nation of residence of said enterprise, unless the enterprise carrier on business in the other nation through a permanent establishment situated therein. If the enterprise carriers on business as aforesaid, the profits of the enterprise may be taxed in the other nation but only so much of them as is attributable to that permanent establishment.

(d) Each nation shall have taxing jurisdiction over income earned by individuals who are residents of either nation from sources within its territorial jurisdiction, property situated therein, including transfers of such property by gift or at death, and products consumed therein.

(e) Where a resident of either nation derives income from the other nation, the amount of tax payable in that other nation in respect to that income pursuant subsections (c) and (d), and the amount of tax payable in the Republic of Puerto Rico that does not exceed for any specific year the amount of tax payable in the United States for that same year pursuant to subsection (b), shall be allowed as a credit against the tax payable in respect to that income in the nation of residence of the taxpayer. A withholding tax on dividends shall be considered a tax on income for these purposes. If the United States amend its laws concerning the provision of tax sparing credits or if the United States reaches an agreement on the provision of a tax sparing credit with any other nation, Puerto Rico shall ipso facto be granted the most favorable degree of tax sparing credit allowed under such amended laws or under such agreement or agreements.

(f) The determination under this section of the residence of any taxpayer, the source of any income, the situs of any property or any other necessary definitions shall be made according to the terms of a joint treaty for the avoidance of double taxation to be entered into by both nations promptly upon the proclamation of the Republic of Puerto Rico. Negotiations leading to such treaty shall be initiated by a special task force designated pursuant to section 2.5 of this title. Until such treaty is executed, such determination shall be made according to the current tax laws of the United States and the Commonwealth of Puerto Rico.

SEC. 5.5 CURRENCY AND FINANCE.

(a) After proclamation of independence, the Republic of Puerto Rico shall have all powers concerning the issuance and control of currency and all powers concerning monetary and financial matters, provided that during the ten years following the proclamation of independence both United States currency and Puerto Rican currency shall be accepted as legal tender in all transactions in Puerto Rico.

(b) The current value of all stock bought by Puerto Rican banks in the Federal Reserve System, Federal Deposit Insurance Corporation and the Federal Home Loan Bank System will be transferred to the Republic of Puerto Rico, including the proportion held by United States national, Spanish and Canadian banks that correspond to the level of their activities of its branches operating in Puerto Rico during the year immediately prior to the proclamation of independence.

(c) The monetary authority of the Republic of Puerto Rico shall establish an integrated system of insurance for deposits in Puerto Rico's financial institutions similar to the Federal Deposit Insurance Corporation. Negotiations will be undertaken with United States monetary authorities to obtain their assistance in the design and establishment of the insurance system, and to determine the extent of financial support to be provided for the system by United States insurance organizations in which Puerto Rico's financial institutions currently participate.

(d)(1) The guarantees provided by the Government of the United States to investors in the secondary market for loans, particularly mortgage loans guaranteed by the Government National Mortgage Association (G.N.M.A.), the Federal National Mortgage Association (F.N.M.A.), the Federal Home Loan Mortgage Corporation (F.H.L.M.) and other United States Government instrumentalities, shall be maintained for Puerto Rico-originated loans until maturity.

(2) Negotiations shall be carried out to ensure that after proclamation of independence Puerto Rico-originated loans, particularly housing mortage loans, can continue to be guaranteed by G.N.M.A., F.N.M.A., F.H.L.M. and other United States Government instrumentalities and can continue to be sold to investors in the United States secondary markets.

SEC. 5.6. PUBLIC DEBT.

(a) The debts, liabilities, and obligations of the Commonwealth of Puerto Rico, its municipalities and instrumentalities, valid and outstanding upon proclamation of independence, shall be assumed by the Republic of Puerto Rico.

(b) After proclamation of independence the United States shall maintain full income tax exemption, as currently provided by law, on interest payments derived from debts of the Commonwealth of Puerto Rico assumed by the Republic, as specified in subsection (a).

(c) During the twenty-five years following the proclamation of independence, the United States shall extend full income tax exemption, as currently provided by law, to interest payments derived from debts of the Republic of Puerto Rico.

SEC. 5.7. INDIVIDUAL RIGHTS TO ECONOMIC BENEFITS AND GRANTS TO THE REPUBLIC OF PUERTO RICO.

(a) All vested rights and benefits which accrue to residents of the Commonwealth of Puerto Rico under the laws of the United States from past services or contributions, such as rights and benefits for veterans or relatives of veterans of the Armed Forces of the United States, retired Government employees, or beneficiaries of old age, disability of survivors' insurance benefits under the Social Security Act, shall not be interrupted after the proclamation of independence but will continue until such time as said rights and benefits are completely extinguished according to the applicable laws of the United States. All services which must be rendered as part of these rights and benefits shall be made available through the Government of the Republic of Puerto Rico in accordance with agreements reached by the two nations.

(b) Notwithstanding the provisions in subsection (a), all contributions made by employees and employers in Puerto Rico to the Social Security System with respect to persons who, upon the proclamation of independence, are residents of the Republic of Puerto Rico and are not yet eligible for old age, disability, or survivors' insurance benefits under the system, shall be transferred to the Government of the Republic of Puerto Rico once said Government establishes its own social security system. The Government of the Republic of Puerto Rico may not use these funds for any purpose other than the establishment and operation of a social security system. Upon the transfer described herein, the obligations of the United States Government under the Social Security Act with respect to such residents of the Republic of Puerto Rico shall cease.

(c) All other Federal transfer payments to individuals and to the Government of the Commonwealth of Puerto Rico shall be maintained in the form of annual block grants to be used discretionally by the Government of the Republic of Puerto Rico—

(1) During the ten fiscal years following the proclamation of independence, the annual block grants shall amount to the annual aggregate funding of all programs which currently extend to the Commonwealth of Puerto Rico, or of all programs which shall have been extended to the Commonwealth of Puerto Rico during the fiscal year immediately prior to the proclamation of independence, whichever shall be greater.

(2) The annual block grants shall decrease thereafter on a straight-line basis, at the rate of ten percent each year, beginning on the eleventh fiscal year after the proclamation of independence. At any time during the aforementioned transition period the terms of this subsection may be modified by agreement between the United States and the Republic of Puerto Rico.

SUBTITLE 6—RELATIONS BETWEEN THE UNITED STATES AND THE REPUBLIC OF PUERTO RICO

SEC. 6.1. TREATY OF FRIENDSHIP AND COOPERATION.

To insure that all provisions of this title which shall have effect after the proclamation of independence will in effect be binding, the United States and the Republic of Puerto Rico shall embody said provisions in a treaty of friendship and cooperation.

TITLE IV—COMMONWEALTH

SUBPART 1. STATEMENT OF PURPOSES

In 1952 the Congress of the United States, fully recognizing the principle of government by consent, and the People of Puerto Rico, in the exercise of their right to self-determination, entered upon a compact which established a Commonwealth relationship between Puerto Rico and the United States.

Under the compact the People of Puerto Rico adopted in their own sovereign right their own Constitution and formed an autonomous political community in permanent union with the United States of America based on the irreversible bond of American citizenship.

In 1953 the General Assembly of the United Nations recognized the creation of the Commonwealth and removed Puerto Rico from the list of non-self-governing territories. This association has enabled the People of Puerto Rico to advance their economic and social development and to preserve their distinct historical heritage and cultural personality.

As inherent in all political relationships freely entered upon, it was based on the understanding that it would evole and develop within its particular political nature upon mutually agreeable terms

It is the purpose of this Act to provide for the enhancement of the Commonwealth relationship by enlarging the scope of self-government of the Puerto Rican people upon the approval of a proposition to that effect by a majority of the eligible voters of the Commonwealth of Puerto Rico.

SUBPART 2. REFERENDUM PROPOSITION: COMMONWEALTH

The referendum proposition regarding Commonwealth, to be presented to, and voted upon, by the People of Puerto Rico shall be as follows:

> "The Commonwealth association with the United States shall be enhanced to enable the People of Puerto Rico to accelerate their economic and social development and attain maximum cultural and political autonomy within permanent union with the United States based on the irreversible bond of American citizenship, a common defense, a common market, and a common currency."

The proposition will appear in the ballot, in Spanish, as follows:

> "El Estado Libre Asociado se fortalecerá para acelerar el desarrollo ecońmico y social y alcanzar la máxima autonomía cultural y política del pueblo de Puerto Rico en su unión permanente con los Estados Unidos sobre los pilares de común defensa, común mer-

cado, común moneda, y el vínculo indisoluble de la ciudadanía americana."

SUBPART 3. PRINCIPLES OF COMMONWEALTH

Section 1 of the Puerto Rico Federal Relations Act, 39 Stat. 954, as amended, 48 U.S.C. section 731, shall be repealed, and replaced by the following:

"(1) The provisions of this Act shall apply to the Commonwealth of Puerto Rico, an autonomous body politic joined in permanent union with the United States on the basis of common citizenship, common defense, common market and common currency.

(2) The policy of the United States shall be to enhance the Commonwealth relationship enjoyed by the Commonwealth of Puerto Rico and the United States to enable the People of Puerto Rico to accelerate their economic and social development and attain maximum cultural and political autonomy within permanent union with the United States, to secure more equitable participation for the People of the Commonwealth of Puerto Rico in all Federal programs that provide grants or services to citizens of the United States as individuals, to secure increased participation by the People of Puerto Rico in United States governmental decisions affecting them, to safeguard the distinct cultural identity of the People of Puerto Rico, and to pro-

tect the bilateral nature of the relationship between the Commonwealth of Puerto Rico and the United States.

SUBPART 4. IMPLEMENTATION OF FEDERAL POLICY

Section 9 of the Federal Relations Act, 39 Stat. 954, as amended, 48 U.S.C. section 734, is amended by inserting at the beginning thereof the term "(a)" and by adding at the end thereof the following:

"(b) A Federal statutory law, or provision of such law, is locally inapplicable unless it is consistent with the policy established under subpart 3 and unless such Federal statutory law has proper regard for the economic, cultural, ecological, geographic, demographic and other local conditions of the Commonwealth of Puerto Rico. This subsection shall not apply to:

(i) any Federal statutory law in which the Congress makes a specific finding that there is an overriding national interest that such law should apply to the Commonwealth of Puerto Rico, or

(ii) any Federal satutory law, or provision thereof, establishing directly or indirectly grants and/or services to civilizen of the United States as individuals, or

(iii) any Federal statutory law or provision thereof relating to citizenship, or

(iv) any Federal statutory law or provision thereof pertaining to the foreign relations, defense or national security of the United States that requires uniform applicability throughout the United States, including the Commonwealth of Puerto Rico, to achieve its intended purposes.

(c) In addition to judicial determinations of the inapplicability of Federal laws under subsection (b), the Governor of the Commonwealth of Puerto Rico may certify from time to time to the Speaker of the House of Representatives, the President of the Senate, and the President of the United States, that a Federal statutory law or provision thereof, other than one excluded from the operation of subsection (b), is inconsistent with a Puerto Rican statute and the policy established under subsection (b). Unless within sixty days of the receipt of such certification, a statute is enacted embodying the finding required under subsection (b)(i), the President shall issue a proclamation that such Federal statutory law or provision thereof identified in the Governor's certification is not applicable in Puerto Rico.

(d)(i) The Commonwealth of Puerto Rico may continue to enter in its own name into international cultural, commercial, educational and sports agreements, and other agreements of like nature.

(ii) In addition, the Governor of the Commonwealth of Puerto Rico may take any official action to promote the international interests of Puerto Rico that requires the consent of the United States Government and is not expressly prohibited by law. The Governor of the Commonwealth of Puerto Rico shall provide written notice to the President of the United States of any official action he contemplates taking pursuant to the authorization of this part of this subsection and not pursuant to any other authorization of consent. The President may, within thirty days of his receipt of such notice, sign and transmit to the Governor of the Commonwealth of Puerto Rico a document expressing his determination that the contemplated official action would imperil the foreign relations or national defense of the United States, in which case the authorization hereby granted shall be withdrawn as regards such contemplated official action.

(e) All departments and agencies of the Government of the United States shall be guided by the policy stated in subpart 3 when carrying out their duties under Federal statutory laws and Federal regulations applicable in or affecting the Commonwealth of Puerto Rico. Every such department or agency shall, before taking any major Federal action applicable in or affecting the Commonwealth of Puerto Rico, separately evaluate the consistency of such action with such policy and shall state, in a document accompanying the major

Federal action, the extent, nature, and result of its consideration.

(f) Any rule, as defined in 5 U.S.C. section 551(4), issued by an agency, as defined in 5 U.S.C. section 551(1), shall apply in the Commonwealth of Puerto Rico only to the extent that it is consistent with the policy set forth in subsection (b). After the effective date of this amendment, when any such rule, other than a rule issued after notice and hearing required by statute, that does not in terms provide that it is inapplicable in the Commonwealth of Puerto Rico is published in the Federal Register, the Governor of the Commonwealth of Puerto Rico may submit to the agency within thirty days in writing (or such longer period as the agency may have prescribed as the period between publication of the rule and its effectiveness) the Governor's determination that such rule is inconsistent with the policy stated in subsection (b). Thereupon, the agency shall reconsider the question of consistency of the rule with the policy stated in subsection (b) and shall, within forty-five days of its receipt of the Governor's determination, publish in the Federal Register its finding either that there is an overriding national interest that the rule be applicable in the Commonwealth of Puerto Rico, in which case the rule, whether or not previously applicable in the Commonwealth of Puerto Rico, shall thereafter be so applicable, or that the rule is not compatible with such policy, in which event such rule, whether or not previously applicable in the Commonwealth of Puerto Rico, shall not be so applicable. Unless the agency for good cause finds that a rule that is the subject of such determination by the Governor of Puerto Rico as is described in this subsection shall be applicable to the Commonwealth of Puerto Rico pending its consideration of such determination, and publishes such finding in the Federal Register, such rule, whether or not previously applicable in the Commonwealth of Puerto Rico, shall not be so applicable pending such consideration. An agency's decision to make a rule applicable or inapplicable in Puerto Rico shall be subect to judicial review.

(g) The laws, rules and regulations of the United States applicable in the Commonwealth of Puerto Rico when the new Federal policy is established in accordance with subpart 3 shall continue in effect except to the extent repealed or modified by this Act, or inconsistent with it, and except as hereafter modified, suspended or repealed in accordance with law.

SUBPART 5. AVIATION

Section 1102 of the Federal Aviation Act is amended by adding a new section (e) to read as follows:

"(e)(i) The Government of the Commonwealth of Puerto Rico shall have authority to negotiate on its own behalf bilateral air transportation agreements governing the operation of air services by United States and foreign air carriers between the Commonwealth and foreign points. Such agreements may also include authorization of service by United States and foreign air carriers to use any point in the Commonwealth as an intermediate or beyond point on routes between points in the United States and foreign nations for which the carrier holds certificate or foreign air carrier operating authority from the Department of Transportation. Such agreements may authorize such carriers to engage in common carriage of persons and property between such authorized points in the United States and the Commonwealth, notwithstanding the provisions of sections 416(6)(7) and 1108 of this Act.

"(ii) Operating rights contained in Commonwealth bilateral air transportation agreements shall be subject to the grant of necessary operating authority by the Department of Transportation and the Administrator. The responsibilities of the Department and the Administrator under subsection (a) of this section shall extend to such bilateral agreements.

"(iii) Operating authority issued by the Department of Transportation in implementation of bilateral agreements negotiated by the Government of the Commonwealth of Puerto Rico shall be subject to the President's right of disapproval as contained in section 801(a) of this Act.

"(iv) The officials of the Federal Aviation Administration of the United States are directed to assist and cooperate air services by United States and foreign air carriers between the Commonwealth and foreign points. Such agreements may also include authorization of service by United States and foreign air carriers to use any point in the Commonwealth as an intermediate or beyond point on routes between points in the United States and foreign nations for which the carrier holds certificate or foreign air carrier operating authority from the Department of Transportation. Such agreements may authorize such carriers to engage in common carriage of persons and property between such authorized points in the United States and the Commonwealth, notwithstanding the provisions of sections 416(6)(7) and 1108 of this Act.

"(ii) Operating rights contained in Commonwealth bilateral air transportation agreements shall be subject to the grant of necessary operating authority by the Department of Transportation and the Administrator. The responsibilities of the Department and the Administrator under subsection (a) of this section shall extend to such bilateral agreements.

"(iii) Operating authority issued by the Department of Transportation in implementation of bilateral agreements negotiated by the Government of the Commonwealth of Puerto Rico shall be subject to the President's right of disapproval as contained in section 801(a) of this Act.

"(iv) The officials of the Federal Aviation Administration of the United States are directed to assist and cooperate with the appropriate officials of the Commonwealth of Puerto Rico in the implementation of any air transportation agreement entered into pursuant to the authority herein established.".

SUBPART 6. DEVELOPMENT OF TOURISM

Section 4a(l) of the Coastal Barrier Resources Act of 1982, 16 U.S.C. section 3503(a)(l), is amended by adding to the end of the subsection: "Notwithstanding the foregoing, no area within the Commonwealth of Puerto Rico shall be included within the Coastal Barrier Resources System.".

SUBPART 7. INTERNATIONAL TRADE

(a) Section 2 of the Act of April 12, 1900, 48 U.S.C. 739, is amended by inserting the following subsection.

"1. To the extent consistent with the international obligations of the United States, the Commonwealth of Puerto Rico is authorized to impose tariff duties on foreign origin products imported into Puerto Rico. Such tariff duties shall be in addition to the general tariff duties applicable to products imported into the customs territory of the United States.".

(b) Section 1102 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. 2902, is amended by adding a new subsection (e) as follows:

"(e) During the negotiation of any trade agreement affecting Puerto Rico under subsections (a), (b), and (c), the

President shall seek the participation of the Commonwealth of Puerto Rico in the negotiation process, and shall consult with the Governor of the Commonwealth of Puerto Rico concerning the potential impact of any proposed tariff rate change on the economy of Puerto Rico.

The Government of the United States shall seek to obtain favorable treatment from foreign countries for exports from the Commonwealth of Puerto Rico and shall encourage other countries to consider Puerto Rico as a developing area for purposes of their respective General Systems of Trade Preferences, and any such regional systems of trade preferences.".

SUBPART 8. MARITIME

(a) Section 9 of the Puerto Rican Federal Relations Act, 48 U.S.C. section 744, is amended to add at the end of the provision: "except that those provisions of the Shipping Act, 1916, administered by the Federal Maritime Commission shall not be applicable to the trade between Puerto Rico and the States of the United States. The Commonwealth of Puerto Rico is authorized to establish its own maritime commission which, when established in accordance with Puerto Rico law shall exercise exclusive jurisdiction over service, rates, fares, and practices governing the trade between Puerto Rico and the states of the United States."

(b) Section 1 of the Shipping Act, 1916, as amended, 46 U.S.C. App. section 801, is amended by inserting after the second "possession of the United States" and at the end of the provision, the following phrase: "not including the Commonwealth of Puerto Rico.".

SUBPART 9. JURISDICTION OVER MARITIME RESOURCES

(a) Amend section 3(21) of the Magnuson Fishery Conservation and Management Act, as amended, 16 U.S.C. 1802(21) to read as follows:

"(21) The term 'State' means each of the several States, the District of Columbia, American Samoa, the Virgin Islands, Guam, and any other territory or possession of the United States, but does not include the commonwealth of Puerto Rico.".

(b) Amend the first sentence of section 2(6) of the Magnuson Fishery Conservation and Management Act, as amended, 16 U.S.C. 1802(6) to read as follows: "The term 'exclusive economic zone' means the zone established by Proclamation Numbered 5030, dated March 10, 1983, except that such zone shall not include zones contiguous to the territorial sea of the Commonwealth of Puerto Rico, provided that the Commonwealth of Puerto Rico shall take no action that would purport to restrict or charge fees to vessels of the United States for the right to fish for highly migratory species of fish within any fishing jurisdiction the 'Commonwealth of Puerto Rico may establish beyond its territorial waters.".

SUBPART 10. INTELLECTUAL PROPERTY

(a) Section 101 of title 17 of the United States Code is amended as follows:

(1) By inserting the following new definitions in alphabetical order:

"The 'design of a useful article,' hereinafter referred to in this Title as a 'design,' consists of those aspects or elements of the article, including its two dimensional or three dimensional features of shape and surface, which make up the appearance of the article, and shall include a 'typeface' as herein defined.

"A design is 'of Puerto Rican origin' (a) if more than 50 percent of its development costs have been incurred within the Commonwealth of Puerto Rico, irrespective of whether such design is fixed in a useful article in the Commonwealth of Puerto Rico; or (B) if it is first fixed in the Commonwealth of Puerto Rico in a useful article intended to be distributed to the public for commercial purposes.

"A 'typeface' consists of a set of letters, numbers, or other symbolic characters, whose forms are related by repeating design elements consistently applied in a national system, to the extent that the repeating design elements in the combination employed in a notational system are (A) original, (B) distinct, and (C) incorporated in a useful article whose normal use is in composing text or other cognizable combination of characters.".

(2) By adding, after the semicolon in the second sentence of the definition of "Pictorial, graphic, and sculptural works," the following: "except where a design of Puerto Rican origin is involved,".

(b) Section 102 of title 17 of the United States Code is amended by adding a new subsection 102 (a)(8) as follows:

"(8) designs of useful articles, where such designs are of Puerto Rican origin.".

(c) Section 113 of title 17 of the United States Code is amended by adding a new subsection (d) as follows:

"(d) In the case of a design of Puerto Rican origin, the scope of exclusive rights in a copyrighted work does not extend to a design that is (i) staple or commonplace, such as a standard geometric figure, familiar symbol, emblem, or motif, or other shape, pattern, or configuration which has become common, prevalent, or ordinary; (ii) different from a design excluded by (i) hereof only in insignificant details or in elements which are variants commonly used in the relevant trades; (iii) dictated primarily by a utilitarian function of the article in which it is fixed, (iv) composed of three-dimensional features of shape and surface with respect to men's, women's, and children's apparel; or (v) fixed in a semiconductor chip product that is protected under chapter 9 of this title. Notwithstanding the foregoing, the scope of exclusive rights shall not be limited by the employment in the design of subject matter excluded under (i) through (iii) hereof, if the design is a substantial revision, adaptation, or rearrangement of said subject matter: *Provided, however,* That such exclusive rights shall be available for a design employing subject matter protected under chapters 1 through 8 of this title or title 35 of the United States Code, only if such protected subject matter is employed with the consent of the proprietor thereof. Such protection shall be independent of any subsisting protection in subject matter employed in the design, and shall not be construed as securing any rights to subject matter excluded from protection or as extending any subsisting protection."

(d) Chapter 3 of title 17 of the United States Code is amended by the addition of a new section 306 as follows:

"§ 306. Designs of Puerto Rican origin

(a) The provisions of section 302 through 305 of this chapter shall not apply to copyrights in designs of Puerto Rican origin.

(b) Copyright in a design of Puerto Rican origin subsists from its creation and endures for a period of ten years.

(c) A term of copyright provided by this section shall run to the end of the calendar year in which in would otherwise expire.".

(e) Section 407 of title 17 of the United States Code is amended by adding the following language before the semicolon in section 401(b)(1): ", or, in the case of a design of Puerto Rican origin, the symbol D (the letter D in a circle), or the words "Design Copyright,' or the abbreviation 'Des. Copr.'.".

(f) Section 407 of title 17 of the United States Code is amended by striking the period the end of section 407 (c) and adding the following language: ", or the work is a design of Puerto Rican origin.".

(g) Section 901 (a) of title 17 of the United States Code is amended by adding a new subsection (10) as follows:

"(10) a mask work is 'of Puerto Rican origin' (a) if more than 50 percent of its development costs have been incurred within the Commonwealth of Puerto Rico, irrespective of whether such mask work is fixed in a computer chip in the Commonwealth of Puerto

Rico; or (B) if it is first fixed in the Commonwealth of Puerto Rico in a computer chip intended to be distributed to the public for commercial purposes.".

(h) Section 906 of title 17 of the United States Code is amended by adding at the end thereof the following:

"(c) The limitations on exclusive rights provided under subsections (a) and (b) of this section shall not apply to mask works of Puerto Rican origin.".

(i) The foregoing sections (a) through (h) shall apply after the date of enactment to all acts of manufacture or distribution that occur in the United States after such date, to all acts of importation into the United States that occur after such date, and to all violations of the exclusive rights of the copyright's owner under of title 17, United States Code that occur after such date.

SUBPART [illegible] FEDERAL PROGRAMS

(a) CONSOLIDATION OF GRANT-IN-AID PROGRAMS.—The Puerto Rico Federal Relations Act is amended by inserting a new section 59, as follows:

SECTION 59.

In order to minimize the burden caused by existing application and reporting procedures for grant-in-aid programs available to the Commonwealth of Puerto Rico it is hereby declared to be the policy of the Congress, notwithstanding any provision of law to the contrary, that:

"(a) At the request of the Governor of the Commonwealth, any department or agency of the Government of the United States which administers any Act of Congress which specifically provides for making grants to the Commonwealth under which payments received may be used by the Commonwealth only for certain specified purposes (other than direct payments to classes of individuals, including, but not limited to, Aid to Families with Dependent Children, title IV-A of the Social Security Act, 42 U.S.C. 601; Medicaid, title XIX of the Social Security Act, 42 U.S.C. 2396; Supplemental Security Income, title XVI of the Social Security Act, 42 U.S.C. 1381; Foster Care, title IV-E of the Social Security Act, 42 U.S.C. 670; and Nutrition Assistance Program, 7 U.S.C. 2028) shall, acting through appropriate administrative authorities of such department of agency, consolidate any or all grants made to the Commonwealth for any fiscal year or years.

"(b) Any consolidated grant for the Commonwealth shall not be less than the sum of all grants which the Commonwealth would otherwise be entitled to receive for such year.

"(c) The funds received under a consolidated grant shall be expended in furtherance of the programs and purposes authorized for any of the grants which are being consolidated, which are authorized under any of the Acts administered by the department or agency making the grant, and which would be applicable to grants for such programs and purposes in the absence of the consolidation, but the Commonwealth shall determine the proportion of the funds granted which shall be allocated to such programs and purposes.

"(d) Each department or agency making grants-in-aid shall, by regulations published in the Federal Register, provide the method by which the Commonwealth may submit: (i) a single application for a consolidated grant for any fiscal year period, but not more than one such application for a consolidated grant shall be required by any department or agency unless notice of such requirement is transmitted to the appropriate committees of the United States Congress together with a complete explanation of the necessity for requiring such additional applications, and (ii) a single report to such department or agency with respect to each such consolidated grant *Provided,* That nothing in this paragraph shall preclude such department or agency from providing adequate procedures for accounting, auditing, evaluating, and reviewing any programs or activities receiving benefits from any consolidated grant. The administering authority of any department or agency, in its discretion, may (i) waive any requirement for matching funds otherwise required by law to be provided by the Commonwealth and (ii) waive the requirement that the Commonwealth submit an application or report in writing with respect to any consolidated grant.

(b) EQUITABLE TREATMENT IN SOCIAL PROGRAMS.—The Puerto Rican Federal Relations Act is amended by inserting a new section 60 as follows:

"**SECTION 60.**

"(a) It is the policy of the United States that the allocations to the Commonwealth of Puerto Rico of the following programs shall achieve full parity with the States of the Union as soon as possible but in no event later than the fifth anniversary of the date of enactment hereof with allocations to States of the Union in the following programs or their successor thereof: Nutrition Assistance Program (NAP); Aid to Families with Dependent Children (AFDC); and Medicaid; and in no event later than the ninth anniversary of the date of enactment hereof with allocations to States of the Union for the Supplemental Security Income (SSI) program, or its successor.".

SUBPART 12. PROTECTION OF WORKERS

(a) Amend section 3 of the Labor Management Act, as amended, (29 U.S.C. 153(b)), by adding after the first sentence: "; with the exception of cases arising under the jurisdiction of the Commonwealth of Puerto Rico which are hereby exclusively delegated to the Labor Relations Board of Puerto Rico. Decisions of the Labor Relations Board of

Puerto Rico may be appealed to the Federal Court of Appeals for the First Circuit.".

(b) The Puerto Rican Federal Relations Act is amended by adding a new section 61, as follows:

"Puerto Rico shall maintain exclusive jurisdiction over employee benefits, other than the benefits currently covered under the Fair Labor Standards Act, the Employee Retirement Income Security Act, and the Occupational Safety and Health Act. Puerto Rico's exclusive jurisdiction shall include, but not be limited to Christmas bonuses, sick and vacation pay, worksman's compensation, and any other benefits not covered under the current aforementioned Federal legislation.".

SUBPART 13. PUERTO RICO PARTICIPATION IN FEDERAL APPOINTMENTS

Section 301 of title 3, is amended by inserting at the beginning thereof the term "(a)" and by adding at the end thereof the following:

"(b) The highest ranking Federal officer serving in the Commonwealth of Puerto Rico for any Federal department and agency, or division thereof, and any other appointment in the Commonwealth of Puerto Rico subject to Senate confirmation, shall be appointed by the President from a list of eligible candidates recommended by the Governor of the Commonwealth of Puerto Rico.".

SUBPART 14. REPRESENTATION IN UNITED STATES SENATE

Section 36 of the Puerto Rican Federal Relations Act, 48 U.S.C. section 891–895, is amended as follows:

“SUBCHAPTER V. RESIDENT COMMISSIONERS

SECTION 891. RESIDENT COMMISSIONERS; ELECTION.

“The qualified electors of Puerto Rico shall choose a Resident Commissioner to the United States Senate and a Resident Commissioner to the United States House of Representatives at each general election, whose terms of office shall be four years from the 3rd of January following such general election, and who shall be entitled to receive official recognition as such commissioner by all of the departments of the Government of the United States, upon presentation, through the Department of States, of a certificate of election of the Governor of Puerto Rico.

“SECTION 892. QUALIFICATIONS OF COMMISSIONERS; APPOINTMENT TO FILL VACANCY.

“No person shall be eligible to election as a Resident Commissioner who is not a bona fide citizen of the United States and who is not more than twenty-five years of age, and who does not read and write the English language. In case of a vacancy in either office of Resident Commissioner by death, resignation, or otherwise, the Governor by and with the advice and consent of the Senate of the Commonwealth of Puerto Rico shall appoint a Resident Commissioner to fill the vacancy, who shall serve until the next general election and until his successor is elected and qualified.

"SECTION 893. SALARY OF COMMISSIONERS; ALLOWANCES, FRANKING PRIVILEGE.

"The Resident Commissioners shall receive a salary payable monthly by the United States. The Resident Commissioners shall be allowed the same sum for stationary and for the pay of necessary clerk hire as is allowed Members of the Senate of the United States and Members of the House of Representatives of the United States. The Resident Commissioners shall be allowed the franking privilege granted Members of Congress.

"SECTION 894. SALARY AND TRAVELING EXPENSES; PAYMENT.

"The salary and traveling expenses of the Resident Commissioners from Puerto Rico to the United States shall be paid in the same manner as the salaries of the Members of the Senate and the House of Representatives are paid.

"SECTION 895. OTHER PRIVILEGES.

"The appropriate sections of title 2 of the United States Codes and any other statutory law that relates to the privileges afforded United States Senators shall be amended to include the Resident Commissioner from the Commonwealth of Puerto Rico to the United States Senate.".

SUBPART 15. JUDICIARY

Section 42 of the Puerto Rico Federal Relations Act, 48 U.S.C. section 864, is amended by deleting the last sentence and inserting the following paragraph:

"Notwithstanding any other provision of law:

"(1) The District Court shall not undertake to construe a theretofore unconstrued Puerto Rico statute or regulation or decide a theretofore undecided point of substantive Puerto Rico nonstatutory law without having given the Supreme Court of Puerto Rico the opportunity to construe such statute or regulation or to rule upon such point of Puerto Rico law.

"(2) The proceedings of the United States District Court for the District of Puerto Rico shall be conducted in the Spanish language upon the request of any party to the proceedings.

"(3) Any issue of law arising under the Puerto Rico Federal Relations Act in any action or controversy brought in federal court shall be certified to the District of Columbia Court of Appeals. In addition, the Commonwealth of Puerto Rico, its departments, agencies and instrumentalities, as well as officials and agents, in both their official and personal capacity, may transfer any action brought against them in the District Court for Puerto Rico to the District Court for the District of Columbia.".

SUBPART 16. PASSPORTS

(a) Section 211a of title 22, is amended by adding after the provision "by the chief or other executive officer of the insular possessions of the United States,"; "and the Governor of the Commonwealth of Puerto Rico,".

(b) The following new section shall be added to title 22 as section 211b:

"SECTION 211b. UNITED STATES PASSPORT OFFICE IN PUERTO RICO.

"The Secretary of State shall establish a Passport Office for the Caribbean located in San Juan, Puerto Rico and shall authorize the Governor of the commonwealth to administer such office as required by law.".

(c) Section 212 of the Immigration and Nationality Act, 8 U.S.C. section 1182 is amended by adding a new subsection (m) as follows:

"(m) COMMONWEALTH OF PUERTO RICO; WAIVER OF REQUIREMENTS; NONIMMIGRANT VISITORS.—

"(1) The requirement of paragraph 26(B) of subsection (a)—of this section shall be waived by the Attorney General upon the request of the Government of the Commonwealth of Puerto Rico, in the case of an alien applying for admission as a nonimmigrant visitor at the invitation of the Government of the Commonwealth and solely for entry into and stay in the Commonwealth of Puerto Rico for a period not to exceed thirty days. The District Office for Puerto Rico of the Immigration and Nationality Service shall issue the special temporary entry visit visas, as well as other entry visas.

"(2) If adequate appropriated funds to carry out this subsection are not otherwise available, the Director of the Immigration and Nationality Service is authorized to accept from the Government of the Commonwealth of Puerto Rico such funds as may be tendered to cover all or any part of the costs of administration and enforcement of this subsection.".

SUBPART 17. LAW ENFORCEMENT

Section 287 of the Immigration and Nationality Act, 8 U.S.C. section 1357, is amended as follows:

"(a) Any officer or employee of the Service authorized under regulations proscribed by the Attorney General, and any officer or employee of and within the Commonwealth of Puerto Rico authorized by the Governor of the Commonwealth of Puerto Rico shall have the power without warrant.".

SUBPART 18. HISTORIC SITES AND CONSERVATION LANDS

Section 8 of the Puerto Rico Federal Relations Act, 48 U.S.C. section 749 is amended by redsignating it section 8A and enacting a new Section 8B:

"SECTION 8b.

"(a)(i) Lands. Title to all lands, buildings, and interests in lands, and other property now owned by the United States and within the territorial limits of the Commonwealth of Puerto Rico, and the harbor areas and navigable streams and bodies of water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters, owned by the United States, which may have been acquired in Puerto Rico by the United States under the cession of Spain in the treaty of peace entered into on December 10, 1898, and the lands owned by the United States, and administered under the Caribbean National Forest, is hereby conveyed to the people of Puerto Rico and placed under the control of the Government of the Commonwealth of Puerto Rico; *Provided,* That the United States and the Commonwealth of Puerto Rico may negotiate to establish mutually agreed terms and conditions for the continued use and administration of such lands and properties.

(ii) The conveyance described in subsection (i) of this section shall be effective thirty days after the enactment of this section and the Legislature of the commonwealth of Puerto Rico shall have the authority to legislate as it shall deem advisable with respect to all such Crown Lands conveyed under this section."

SUBPART 19. COMMUNITY VALUES

The Puerto Rican Federal Relations Act is amended by inserting a new section 61 as follows:

"SECTION 61.

"(a) DEFINITIONS.—

"(1) The term 'antitrust laws' has the same meaning given such term in the first section of the Clayton Act, 15 U.S.C. section 12, and shall also include section 5 of the Federal Trade Commission Act, 15 U.S.C. section 45.

"(2) The term 'person in the entertainment industry' means any organization, or an individual connected with any organization, that produces, distributes, transmits, or exhibits any form of audio or visual entertainment.

"(3) The term 'audio or visual entertainment' includes:

"(i) video, audio, or mixed programs transmitted via electromagnetic waves of any frequency, whether transmitted to all receivers of a given type within transmission range, or to only selected receivers on the basis of a subscription fee or any other criteria;

"(ii) programs transmitted by cable systems as defined in section 602(5)–(6) of the Cable Communications Policy Act of 1984, 47 U.S.C. section 522(5)–(6), except that reference in 47 U.S.C. section 522(6) to 'video' shall be read as 'video or audio' and references in 47 U.S.C. section 522(6) to 'television' shall be read as 'television or radio'; and

"(iii) motion pictures, which include entertainment, using film, videotapes, videocassettes, compact discs, or any other functionally substantially equivalent medium, if admission is generally charged for such entertainment, or if such entertainment is generally made available to the public on a rental or purchase basis for private viewing.

"The term 'audio or visual entertainment' does not include printed or otherwise written material unless such printed or otherwise written material is used in any form of audio or visual entertainment described above.

"(b) Upon declaration by the Governor of Puerto Rico (the Governor) and publication of such declaration in the official register of the Commonwealth of Puerto Rico, the antitrust laws shall not apply to any joint discussion, consideration, review, action, or agreement by or among persons in the entertainment industry for the purpose of, and limited to, developing and disseminating voluntary guidelines designed to alleviate the negative impact of violence, pornography, alcohol and drugs in all audio or visual entertainment in Puerto Rico, or in any subset of audio or visual entertainment in Puerto Rico as the Governor may designate in any declaration under this section, provided that

"(1) no declaration by the Governor under this section shall operate to exempt from the antitrust laws any joint discussion, consideration, review, action, or agreement that results in a boycott of any person; and

"(2) no declaration by the Governor under this section shall operate to exempt from the antitrust laws any activities conducted more than 36 months after such declaration by the Governor. The Governor may limit the effect of any declaration to a shorter period if he or she does so in the declaration itself.

"(c) A declaration by the Governor under section 2 concerning any forms of audio or visual entertainment shall not limit his or her authority to make future declarations concerning those forms of audio or visual entertainment."

SUBPART 20. ASSUMPTION OF BUDGETARY RESPONSIBILITIES AND TRANSFER OF FEDERAL FUNCTIONS

The Puerto Rican Federal Relations Act is amended by inserting a new section 63, as follows:

"The Commonwealth of Puerto Rico shall assume the expenses inherent in all governmental authority transferred pursuant to this Act. The Government of the United States, or any agency thereof; may from time to time delegate to the Commonwealth of Puerto Rico the total or partial performance of functions vested in the United States, including the administration of such Federal laws and programs on the island, as may be mutually agreed.".

SUBPART 21.

The enhancements to the Commonwealth relationship adopted pursuant to this Act shall form part of the Compact entered upon by the Congress and the People of Puerto Rico in 1952. It may be amended in the same manner as entered upon in order to provide for the continuing enhancement of the Commonwealth relationship.

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General Services Administration
Office of Congressional Affairs
Washington, DC 20405

July 14, 1989

The Honorable
J. Bennett Johnston
Chairman, Committee on
  Energy and Natural Resources
United States Senate
Washington, DC 20510-6150

Dear Mr. Chairman:

Enclosed is the General Services Administration (GSA) Statement for the Record on S. 710, S. 711, and S. 712, legislation to provide for a referendum on the political status of Puerto Rico.

We appreciate the opportunity to present our views on this legislation. If you have any questions concerning the enclosed statement feel free to call me on 566-0563.

Sincerely,

Robin G. Graf
Acting Associate Administrator
  for Congressional Affairs

Enclosure

STATEMENT OF EARL E. JONES
COMMISSIONER
FEDERAL PROPERTY RESOURCES SERVICE
GENERAL SERVICES ADMINISTRATION
SUBMITTED TO THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
JULY 1989

Mr. Chairman and Members of the Committee:

I am Earl E. Jones, Commissioner of the Federal Property Resources Service, General Services Administration and I would like to submit for the record the views of the General Services Administration (GSA) on S. 710, S. 711 and S. 712, bills "To provide for a referendum on the political status of Puerto Rico." The caption of the bills fully describe their purpose.

GSA has no comment on the overall merits of or need for the bills as they relate to the selection of a particular political status, however, we would like to express our concerns regarding the proposed real property disposal provisions contained in S. 712. Briefly summarized, each of the political status options provides for the disposition of Federal real property located in Puerto Rico at variance to the provisions of the Federal Property and Administrative Services Act of 1949, as amended (Property Act).

The Property Act is the statute governing the disposition of most Federal real property, including that located in Puerto Rico. Under that Act, GSA is vested with the responsibility for administering an economical and efficient system for the Federal Government to promote the most effective use of real property by Federal agencies and the orderly disposition of real property it no longer requires.

Under normal procedures, real property which is no longer needed by a Federal agency is reported to GSA as excess real property. GSA first notifies other landholding Federal agencies that such property is available for further Federal utilization. If we receive a properly justified request for further use of the property for Federal purposes, it is transferred to the requesting agency. Such transfers among Federal agencies fulfill the Congressional objective stated in the Property Act that GSA minimize executive agency expenditures for property through efficient and effective utilization of excess property.

If there is no further Federal requirement for a property, it becomes available for disposal as surplus real property. Under existing provisions of law, eligible State and local governmental units and certain nonprofit institutions may acquire surplus real property for restricted local public purposes at monetary discounts of up to 100 percent where such purposes reflect the highest and best use of the property. Eligible public uses include public park and recreation, historic monument, public airport, health, education, correctional facility, highway and wildlife conservation. Also, in accordance with the provisions of Title V of the Stewart B. McKinney Homeless Assistance Act, Federal properties determined suitable by the Department of Housing and Urban Development are made available by GSA in coordination with the Department of Health and Human Services for homeless assistance purposes.

In addition, State and local public bodies may purchase real property by negotiation at its estimated fair market value for unrestricted use. Under certain limited circumstances, GSA is also authorized to negotiate the sale of real property with private firms and individuals. Property which is not needed for further Federal purposes and which is not transferred for nonfederal public purposes is generally offered for sale to the public by GSA through competitive bid offerings and public auctions. Such sales benefit the locality by placing the property in productive use, returning it to the tax rolls, and providing the taxpayers on a nationwide basis a monetary return which is applied to their benefit.

In every decision involving the practices described above, we are required by law to consider environmental and cultural impacts resulting from any proposed disposition in accordance with the National Environmental Policy Act of 1969, the Historic Preservation Act of 1966, and other relevant statutes. Hence, the GSA real property management and disposition responsibilities constitute an extensive program in which Federal agencies, State and local governments, and the public fully participate through well-defined guidelines promoting such participation.

I have dwelt at some length on the statutory authorities, and implementing procedures so that you may be better able to draw your own conclusions as to their interface with the matters which come before your Committee concerning the proposed disposition of Federal real property holdings in Puerto Rico. However, I would like to emphasize that the structure of the Property Act and the Federal Property Management Regulations promulgated by GSA were designed to assure the fullest use of federally owned real property and that real property assets of the Federal Government are judiciously and equitably managed or disposed of in a manner that serves the best interests of both the Government and the general public.

We understand the desire of Puerto Rico to acquire title to Federal real property holdings in order to advance its economic and social development and to preserve its distinct historical heritage and cultural personality. However, we believe Puerto Rico's overall interest can be accommodated under the existing real property program, without any changes in the existing law or disposal procedures.

The CHAIRMAN. Before announcing the first panel, I would like to turn to the ranking minority member of this committee with whom I have worked every step of the way on this legislation and virtually all legislation on this committee, Senator Jim McClure of Idaho.

STATEMENT OF HON. JAMES A. McCLURE, U.S. SENATOR FROM IDAHO

Senator MCCLURE. Thank you, Mr. Chairman. First I would like to congratulate you and the leadership of the three parties who will be testifying today and tomorrow.

I am quite frankly somewhat surprised at the ambitious schedule that the Chairman has announced has so far managed to hold. For an issue of this importance, there has been a remarkable amount of work accomplished, and considerable credit goes to all those involved.

I must say that each of the status options demonstrates considerable thought. I think that each poses the basic issues which the committee needs to address. Whether we will agree with either the particular objectives of individual sections or with the approach taken to secure that objective remains to be seen.

I look forward to the testimony which we will receive today and tomorrow, later this month in Puerto Rico, and then subsequently back here.

As I indicated in my earlier remarks before the Senate, I view this measure as central to our process of government. I do not know what particular status option our fellow citizens in Puerto Rico will choose at this moment, but they should have the option and we should ensure that their decision is an informed one.

In the history of the United States, there is probably no better example than Puerto Rico as a result of well-intentioned federal legislation which does not have a specific goal. In the space of two years earlier this century we in the Congress enacted measure impediments to a final status resolution.

In 1917 Congress extended citizenship, and citizenship is probably the single greatest problem which those advocating independence will have to resolve.

The other issues such as tax and trade, economic assistance, foreclosure of the area to the armed forces of third countries, and base rights all are tractable. We have dealt with all those recently in the Micronesian Compacts. Citizenship and the shared family ties between those United States citizens living in Puerto Rico and those who have moved to the mainland is the crux of the problem.

One year later in the Revenue Act of 1918, Congress enacted the most difficult hurdle with which those advocating statehood must deal. In 1918 we treated Puerto Rico as a foreign country for tax purposes. Had we simply extended the federal tax laws either as a local territorial tax, as we did for Guam, or simply provided the revenues be paid into the local treasury, as we did for the Virgin Islands, I think that the statehood measure would be far simpler. Congress created the current problem, and I think that Congress has an obligation to attempt to deal with it.

History is useful only insofar as it has proven the limitations of congressional prophesy. The expectations for Alaska were that it would never be self-sustaining, and the state now has an $11 billion trust fund developed through the grants which accompanied statehood.

Congress also assumed that a package deal of Alaska and Hawaii would produce two Democrats from Alaska to balance the two Republicans from Hawaii. Well, at least the arithmetic was right.

I will have a great many questions on each of these proposals, and I expect that the end result of our process will likely be somewhat different than that where these measures started.

As I said in my floor remarks, I consider both independence and statehood to be permanent, in that I believe that for all practical purposes, these options, if implemented, will be irreversible.

Theoretically, of course, by mutual agreement, they could be reversed, but no one should hold any hope of that ever happening. The present status does not have that degree of permanence. That does not mean that it's not the best option at the present time.

It may be that fears over the impact of statehood on the rich culture of Puerto Rico would lead people to not opt for statehood at this time. I think that those fears are groundless, but I recognize that there is that concern, and certain individuals may prefer the current status.

Economic concerns may affect others who view independence as more important than citizenship, and they may also prefer to bide their time. Those are personal decisions which are beyond our control, and if there are improvements which can usefully be made in the current status, then we should make them.

Our objective is to produce three measures which will honestly and thoughtfully present options which this Congress has agreed to support. It may be that a subsequent Congress would produce an independence bill more acceptable to those who advocate that option. I don't know.

It may be that a subsequent Congress will enact a statehood bill with better guarantees. Again, I don't know.

It may be that a subsequent Congress will agree to provisions for the present status which we will not. Predictions for a future Congress are probably on a par with congressional prophecy.

Once again, let me thank the Chairman and the staff for their great efforts in putting these hearings together and let me thank and congratulate the leadership and each of the three parties for their hard work and dedication to seeing this process work openly and fairly for all the people of Puerto Rico. They deserve nothing less from us.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator McClure.

In my opening statement I said we wanted to have elections in 1992. Obviously I should have said 1991 because 1992 is election year in Puerto Rico and, of course, 1991 is our target date.

It is very, very important that we get this legislation out in this Congress so that the elections can be held far in advance of your elections in 1992, and I wanted to clear that up.

Next I want to call on Senator Pete Domenici, a valued member of this committee, who will either speak in Spanish or English at his choice.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Thank you very much, Mr. Chairman.

Yo voy hablar en Ingles pero entiendo no puedo hablar muy bien pero algo.

The CHAIRMAN. That is enough. That is enough.

Senator DOMENICI. You do not need to interpret that.

Mr. Chairman, and friends from Puerto Rico, I do not have a long statement.

I compliment the Chairman and ranking member for the diligent work that they have put into this issue, and I compliment the leadership of Puerto Rico and the three parties for their diligent effort in bringing this issue to the forefront.

This is, as I see things in the world today, a very important event for the United States because it's obvious that the world is moving rather rapidly in the direction of democracy and freedom and individual opportunity. Perhaps that movement has been moved along by the success of the United States democracy and its union of states.

But, in any event, the fire for freedom and for democracy is moving rapidly in the world, and it will not be put out. It will move even more rapidly in the next 40 to 50 years in my opinion. We see it all around us.

And, in a sense, this is an exercise in United States practicing what we preach. The people of Puerto Rico through their leaders desire, it appears, desire to have an opportunity to exercise that individual right at the ballot, at the box, at the voting booth to determine their collective destiny as an institution of government.

And it seems to me that we do not know how it will turn out. We do not know how it will turn out here. We do not know how it will turn out in Puerto Rico. But it seems to me that it is incumbent upon us since we seem to have the destiny of your future status in our hands, to join hands and come up with something that is practical for the exercise of the rights that we hold so sacred in our country of determining one's destiny and of using democracy and individual thought, individual decisions through the ballot box to determine the destiny and the future. It seems to me that we can do no less than to join hands and do the best we can to give you that opportunity.

I look forward to working on this committee with the chairman and ranking member and look forward to the testimony today. This will be a long trip together. There's no question about it. It won't be a month or two. It will be very long and very arduous, but it does seem to me that through the hard work of the Chairman and ranking member and their commitment that we're on the way. Through the hard work of your leaders clearly you are moving in the direction that compliments this effort, and we compliment your effort, so I hope it works out in a way that is in the best interest of our country and the best interest of your people. Thank you very much.

The CHAIRMAN. Thank you, Senator Domenici.

Senator Burns.

STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. Thank you, Mr. Chairman. I have no lengthy statement, and I would heed the word of Senator Domenici this morning that it will be a long trek as we work our way through this process.

A special welcome to our special guests this morning, and I look forward in their testimony and the information that can be gained by me personally, and I will have to look further into this issue because I am new on this committee and new to the Congress of the United States.

I congratulate our Chairman for moving this process along and allowing me to be a part of that process. So, if it is going to be a long and arduous trek, then maybe I should withhold my statement and sit back and listen because I will probably learn a lot more than I can contribute to it. But I look forward to it and the information that emanates from these hearings. Thank you, Mr. Chairman, and congratulations to you.

The CHAIRMAN. Thank you, Senator Burns.

Senator HEFLIN. No statement.

The CHAIRMAN. Senator Ford?

Senator FORD. I have no statement. Thank you, Mr. Chairman.

The CHAIRMAN. Before we begin our hearings, I would like to explain what we have in mind.

The three parties have each been invited to make an initial statement of 30 minutes each, after which we thought we would get the three parties represented by their principal for a round of questions to the extent we have time this morning.

Then we will begin individual statements and longer questions one at a time of the three parties beginning this afternoon with Governor Hernandez-Colon.

Before we begin, I would simply like to thank all three parties for real cooperation in this effort.

I want the people of Puerto Rico to know that each of the three parties has been well represented. They have played this game fair. They have worked hard.

The product represented by S.712 shows a real dedication of all three parties to make the process work.

Really, the process itself is a very important thing because it represents self-determination for Puerto Rico. That is what we are going to try to deliver on this committee to the people of Puerto Rico. That is a realistic choice and self-determination.

What that choice will be and, indeed, what the shape of the choices will be we cannot tell, and that is what this process is about. But thus far I want to thank all three parties for their very hard and effective work.

We begin this morning with the Statehood Party represented by Governor Carlos Romero Barcelo. He is accompanied by former

Governor Luis Ferre, both very distinguished Governors and very distinguished people. They are accompanied by Pedro Rossello and, Governor Romero Barcelo, you may begin.

STATEMENT OF GOV. CARLOS ROMERO BARCELO, PRESIDENT, NEW PROGRESSIVE PARTY (STATEHOOD), ACCOMPANIED BY DR. LUIS A. FERRE, AND DR. PEDRO ROSSELLO, STATEHOOD PARTY

Governor ROMERO. Thank you, Mr. Chairman, Senators.

I am honored to be here with you on this day, I believe it will be an historic day and a significant milestone, the admission of Puerto Rico as the 51st State of the Union.

My name is Carlos Romero Barcelo, and I am here today in my capacity as president of the New Progressive Party of Puerto Rico, the pro-statehood party. I served two terms as Governor of Puerto Rico and as Mayor of San Juan. I am privileged to be here with Dr. Luis Ferre, the founder of our party, a man who has been an inspiration to generations of Puerto Ricans in our quest for political equalty.

To my left is also the Vice President of our party, Dr. Pedro Rossello.

And at this point, I would wish—I would ask Don Luis to make a few brief remarks.

STATEMENT OF DR. LUIS A. FERRE, STATEHOOD PARTY

Dr. FERRE. Thank you, Governor.

Mr. Chairman and members of the committee, I am Luis A. Ferre, former Governor of Puerto Rico, and I am here on behalf of the Statehood Party and also of the Statehood Coalition which represents 20 organizations that are working for statehood of Puerto Rico.

The testimony of the Governor, Carlos Romero Barcelo, will give is the continuation of the quest for statehood that those of us who have confidence in the rich values and vigorous potential of American democracy have kept alive.

I will only give you a personal perspective of our odyssey. I am now 85 years old, and most of my life has been dedicated to the cause of statehood of Puerto Rico because I sincerely believe that the United States is the true champion of democracy and equality in the world, with a constitution that has permitted the orderly and successful development of its resources.

It was 53 years ago in 1936 that I first appeared before a committee similar to this one to oppose a bill by Senator Millard Tydings that would grant independence to Puerto Rico. I had to travel from San Juan to Haiti, Cuba, and Miami by plane and then by train to Washington, quite a trek. A long trip in those days, but moved by my desire to defend the right of statehood for the loyal American citizens of Puerto Rico. This was the beginning of a pilgrimage that has continued ever since, and it will continue by myself and those that have my same convictions until we have achieved our goal, seeing Puerto Rico admitted as a state of the union.

It has been a difficult task because economic, political, and cultural objections have been raised by a large number of Puerto

Ricans who though aspiring to retain their U.S. citizenship were misled to believe that it was both impossible to attain and catastrophic for Puerto Rico to forsake its supposedly advantageous position of tax exemptions and its territorial condition to assume the legitimate obligations of statehood with all its rights and privileges. Those of us who had confidence in the dynamic forces of statehood were convinced that this was a mistaken position.

In 1949, we testified before the Subcommittee of the Committee on Labor and Education at hearings held in Ponce, Puerto Rico, and maintained that what Puerto Rico needed to solve the serious economic problems they had observed was something that required, and I quote:

> More than a kind interest on our part and that of Congress to extend to us this or that measure of help in a generous spirit of fair deal that the root of our problem went deeper and required an equal deal for the American citizens of Puerto Rico which would give them the equality of opportunity to which every American citizen is entitled so as to be able to solve his own problems by his own efforts and through his own enterprise.

And added:

> What must be done instead? I contend that the problem of the United States citizen of Puerto Rico must be met with a massive attack, with courage, determination, and honesty. If we are American citizens, then we must be given the tools that our fellow American citizens in the continental United States have to solve their problems, and those are equal rights under statehood so that we can protect our economic interests in that very place, Congress, where economic policies are established.

This was in 1949, but our effort was to no avail. Puerto Rico continued as a ward of Congress with the illusion that it was better to enjoy tax exemption than equality of rights and duties. And as a result, the problems continued to grow and the economic help to Puerto Rico vastly increased.

In 1966 the United States Puerto Rico Status Commission was created, and I had the privilege of being appointed on behalf of the statehood position. One of its conclusions reads:

> Economic studies indicate that sustained economic growth under the present status and continuation of the special economic arrangements will make statehood with adequate but not extraordinary or unprecedented provisions for transition fully possible without severe risks.

Following the recommendations of the Status Commission, a plebiscite was held in Puerto Rico in 1967 between independence, statehood and enhanced commonwealth. The statehood forces rallied under my leadership and that of Mr. Romero Barcelo and others, and we increased our voting strength in such a manner that four months after the plebiscite we organized the New Progressive Party on the platform of statehood, and won the 1968 election. As a result, I was elected governor after 28 years of commonwealth control.

Well, another generation has gone by since the Status Commission report of 1966, and we find ourselves in the same predicament of trying to solve the problems of Puerto Rico with patches of the same special measures that have proven ineffective for two generations. Are we going to try again in the same measures that have failed and have made Puerto Rico dependent every time a larger measure from the largesse of Congress to find ourselves a generation from now with a large economic dependency or is it not time to try the well tested method of the quality of rights, obligations, and opportunities that has been so successful with the 50 states.

This paternalistic approach is not the method of American democracy. It is not fair to the 3,300,000 U.S. citizens living on the island, nor to the 2,300,000 Puerto Ricans living in the 50 states who have patriotically contributed to the defense of our country during all the conflicts in which we have been involved during this century and who by their industriousness and resourcefulness have also contributed to the prosperity and progress of the United States. Nor does it correspond either to the spirit of fair deal of American democracy to hold 3,300,000 U.S. citizens disenfranchised any longer from their political rights under the territorial clause of the Constitution.

The United States Congress has been called by a great patriot the "moral summit of the world." Giving Puerto Rico the right to assume its full responsibilities as a state of the union after almost 100 years of apprenticeship is the best demonstration of your commitment to this lofty leadership. It would also be a proof to the world that democracy American style does work. Thank you, gentlemen.

The CHAIRMAN. Thank you very much, Governor.

STATEMENT OF GOV. CARLOS ROMERO BARCELO—Continued

Governor ROMERO. Mr. Chairman Senators, there are several points I would like to make in my statement today. First, I would like to devote my comments to the legislation that is pending before the committee. Having the Congress invite the people of Puerto Rico to express their will on their preferred status is a significant gesture. More than that, it is a governmental exercise of surpassing importance.

Congress' initiative to enact the legislation enjoys the New Progressive Party's full endorsement. We believe the people of Puerto Rico will exercise this franchise to select statehood. Whatever the result, the time has come to gauge the will of the U.S. citizens in Puerto Rico.

Mr. Chairman, Senators, you will hear from three very dedicated political leaders in these hearings. We differ strongly in matters of policy, but each of us loves the island of Puerto Rico and its people. Each of us wishes to promote the economic development of Puerto Rico. Each of us wishes to preserve and enhance the free institutions and traditions that have made our island a beacon of liberty in the Caribbean. Our differences have to do with how best to promote these ends.

One of us believes the way is through independence. Another that it lies in a mixed relationship with the United States known as commonwealth. I believe the best way is the same as that chosen by our fellow citizens of the United States, through statehood.

If Congress passes plebiscite legislation, we will campaign hard for our positions. Just as in campaigns in the States, there will be some hard punches thrown and received, but the purpose of that hard campaigning will not be for personal gain or political aggrandizement. It will be to enhance the well-being of our fellow Puerto Ricans by the best means we know.

It is important to keep this in focus, the debate over statehood versus the other two options is absorbing and because the definitions of each status have been incorporated in the legislation is an indispensable element. But let us not lose sight of the overall objective that Congress enact this legislation inviting the plebiscite.

Whatever the merits of our differences, this result is a common goal. And, having said that, everyone knows I represent an ever-growing number of Puerto Ricans who believes that statehood is the only viable status. Faithful to my beliefs and my constituency, I advocate that course.

These hearings are being televised in Puerto Rico where they were watched with intense interest. However, it will come as a surprise to many Americans that there is so much debate about Puerto Rico's political future. After all, for the near century since the Spanish American war, the United States and Puerto Rico have shared a common bond, a common heritage, and an uncommon interweaving of our societies.

In every war since World War I Puerto Ricans have fought under the American flag. Nearly 200,000 Puerto Rican citizens have served the United States faithfully in this century's major wars. Many paid the ultimate price for the cause of democracy. In the Korean war, for example, Puerto Rico was second among all states in the number of wounded and third in the number of battle deaths.

The American Naval base at Roosevelt Roads is the largest in the world outside the mainland U.S., and it is vital to our hemispheric and international security. More than two million Puerto Ricans live, work and vote as full-fledged citizens all across the United States in addition to the 3,300,000 Puerto Ricans who live on the island.

Our cultures exchange the best of both worlds with musicians like Pablo Casals, opera singers like Justino Diaz, actors like Jose Ferrer, Raul Julia and Rita Moreno, athletes like Roberto Clemente, Chi Chi Rodriguez, and Angel Cordero achieving fame not only in America, but around the world.

Our economies have virtually become one. More than 75 percent of our consumer goods are produced in the 50 states. More than 90 percent of our industry derives from mainland U.S. businesses. Since 1917 Puerto Ricans have been citizens of the United States. We have 3,300,000 American citizens living in Puerto Rico, more than live in 27 of the states now represented in Congress.

With such a close bond, with so much progress some people ask why Puerto Rico would ever want to change the current status and become the 51st state. The answer is simple. Because we do not have equal rights.

Puerto Ricans are a talented, a hard working people, a proud people. We are U.S. citizens who have given their lives for our country and have worked hard to enrich our nation, but we are U.S. citizens with a difference. We are second class citizens who have no voice in our nation's future, who have no vote in Washington.

For more than 200 years the United States has been the world's shining example of democracy and today that torch of the Statue of Liberty is burning brightly in Beijing. It seems in Congress that while that torch burns brightly in Beijing and in other countries where they have dictatorships, we will have today some people who will be advocating permanent disenfranchisement.

So, it should surprise no one that American democracy burns brightest in Puerto Rico. We already are U.S. citizens. What we seek is to become full-fledged citizens with the same rights and responsibilities as Americans in New Orleans or Boise or any American city or state.

I believe the case is compelling for Puerto Rico to become the 51st state. President Bush agrees. George Bush is a strong supporter of statehood for Puerto Rico. Many Democratic and Republican members of Congress also believe that the state of Puerto Rico will strengthen this country, just as Alaska and Hawaii did, and just like the other 35 states who joined the union after the revolution.

Let me briefly spell out the reasons why Puerto Rico should become the 51st state. Let me also discuss some of the misconceptions about what this would mean.

There are four compelling reasons why Puerto Rico should become the 51st star on the American flag. The first reason goes back to the first 13 stars on that American flag. The American revolution was fought to give people the right to decide their own destiny. Puerto Ricans seek no less.

We are subject to the laws of Congress, but three million Puerto Ricans, three million U.S. citizens have no vote here in Congress. That is not right. It was not right in the 13 colonies in 1775, and it is not right in Puerto Rico in 1989.

Puerto Rico is subject to a patchwork of federal laws, some of which are the same as they are here in the mainland, some of which are specifically written for our island. But all these laws governing Puerto Rico share a common feature. Not one Puerto Rican had a vote to determine what those laws were going to be.

If Puerto Rico becomes the 51st state, the motto which adorns the Supreme Court, "Equal justice under law," will finally have real meaning on our island.

The second reason why Puerto Rico should be the 51st state is because we have earned the right to become full-fledged American citizens, and many Puerto Ricans earned it the hard way, with their lives. I mentioned early the number of Puerto Ricans who have served and died fighting under the American flag. But behind those numbers are heros, Puerto Rican heros, American heros.

When American planes sought to avenge the bloody terrorism of Muhammar Quaddafi's Libya, a Puerto Rican Air Force commander was in the eye of the raid, and Major Ribas-Dominicci gave his life for his country. His mother did not vote for the President who gave the order to take action against Libya. She has no right to vote. She lives in Utuado, Puerto Rico.

The United States in its long march to overturn inequality has historically reversed past patterns of discrimination. Other men and women have fought in the nation's wars when they, too, were disenfranchised. In World War I and Korea, World War I, and World War II and Korea men and women served and died at the time when neither they nor their parents could vote. They came from Alaska and Hawaii. They came from southern states, and they were below the age of 21. They could fight, but not until the 1960s and early seventies were they granted full voting rights.

The nature of the commonwealth or territorial status is undemocratic in itself. It seems preposterous to suggest that Congress, the Congress of the nation which is the example of democracy throughout the world can sponsor, encourage or support a relationship between the fifty states and a territory of 3,300,000 U.S. citizens based on permanent disenfranchisement.

The third reason for Puerto Rican statehood is international relations and national security. Just as Puerto Rico needs the United States, the United States needs Puerto Rico. Earlier I mentioned the critical role played Roosevelt Roads Naval Base. Puerto Rico is at the crossroads of the Caribbean and North, South, and Central America.

If the security of the 20th century America focused on Europe and Asia, then it is clear that the security of 21st century America could well center on this hemisphere. We need look no further than Cuba, Panama, Nicaragua and the drug lords in South America to realize the foreign policy challenges that we face.

Admission of Puerto Rico as a state will demonstrate to Central America and South America in an irrefutable way that the United States is genuinely hospitable to Hispanic language and culture. The present territorial relationship, using the Supreme Court's word in 1980, is one in which decisions are made for the territorials in the national capital without their participation.

That sends one signal to Latin America. On the other hand, statehood in which Puerto Ricans take part in choosing the American President and elect actual voting members to the Senate and the House sends quite another kind of signal.

I do not know how many billions in foreign aid and debt forgiveness such a signal is worth, but surely it has great value for American standing in the eyes of Latin America. It would place a part of the American union in an area of great strategic interest to the United States, the Caribbean. Granting statehood to Hawaii achieved the same result in the Pacific.

A territorial outpost is one thing. Even an enormous military facility such as Roosevelt Roads cannot transform it into something organically linked to the mainland. By its very nature statehood does that. It will for all practical purposes end the debate that has sometimes erupted in the United Nations over the alleged colonial status of Puerto Rico.

And the fourth reason why Puerto Rico should become a state can be summed up in two words: the future. The first 13 of the United States made a great free and prosperous nation. And that nation became greater, freer and even more prosperous with each new state that was added.

When the Louisiana Purchase was made, many Americans scratched their heads and asked what would they ever do with all that worthless land. When William Seward committed his folly in buying Alaska, people thought he was crazy. But today you cannot imagine what America would be like without the states of the Louisiana Purchase, without the state of Alaska.

I am confident that in a few decades' time the citizens of the United States will look back and not be able to imagine a time when Puerto Rico was not the 51st state of the union. The genius of the American experiment in democracy is that the United States has never stopped growing, not just in size and population, but in the diversity, strength and freedom of its people.

Puerto Rico has been a member of the union, although on a hybrid basis since 1989. The Puerto Rican people have been United States citizens since 1917. They have bled for their country and they have earned the opportunity that the pending bills would bestow, the chance to express a preference regarding the type of relationship they should have with the mainland with an advance knowledge that Congress has blessed their endeavor. Equality, justice, patriotic service, international relations, national security and the future, all good reasons why Puerto Rico will be a great state in a great nation.

Now, let me address some of the arguments some people make against Puerto Rican statehood. Just as I believe there are compelling reasons for statehood, others find arguments to oppose it.

The first argument they cite is why upset the status quo. Why not just remain a territory tied to the United States getting a free ride? Puerto Rico has made progress as a territory. But, no matter how much economic progress we make as a territory, no matter if we call it commonwealth, we can never solve the fundamental problems of that status. We will never be equal. We will always be second class citizens without participation in the decisions that affect our nation's future. We will never know when Congress will withdraw what it has given.

Independence will give us total control of our destiny. But the overwhelming majority of Puerto Ricans believe our destiny, our families and our future are inextricably bound with that of the United States. Only a relative handful of Puerto Ricans favor independence. Only one option will endow Puerto Ricans with the full rights of American citizens. That option is statehood.

The status issue is a voting rights issue. It is also a civil rights issue. The present territorial relationship violates a basic principle of democracy, the principle of government by consent of the governed.

Governor Hernandez-Colon stated correctly on February 26, 1989 the following, and I quote, "Due to our unique relationship with the United States, Puerto Rico has no participation in making laws that apply to us, a lack of democratic legitimacy in the application of those laws is a basic problem in the political structure of the commonwealth we have been aware of since 1952."

Statehood is a challenge. It is the inevitable choice of those who place a high value on representative government and who believe that Puerto Rico's real economic development will occur not as a territory under the plenary powers of Congress to grant or withdraw various benefits, but as a state inextricably bound to the union of other states.

From the Congress' point of view, statehood is the only option of the three under which Puerto Rico will contribute to the federal treasury and not simply make claims upon it. The difference is dramatic. Under the present commonwealth status, to say nothing of the proposed enhancement of that status, the net deficit to the treasury that is attributable to Puerto Rico will be at least $160 billion over the next 25 years. The net deficit under our statehood proposal will be about $17 billion over the same 25-year period, and in the later years under statehood, there should be no deficit at all, but a surplus beginning in the 18th year. So, fiscal prudence is one reason why Congress should wish to make statehood possible for Puerto Rico.

The second argument against statehood is economic. Opponents of statehood claim Puerto Rico would suffer serious economic side effects from the imposition of federal income taxes, and the loss of section 936 tax incentives.

The facts are exactly the opposite. It is under territorial status that Puerto Rico's economic development is uncertain. Commonwealth status is the most serious threat to section 936. Congress may eliminate the section and would be under pressure to do so in consideration of every future tax bill.

We, on the other hand, are not proposing to end section 936 precipitously. We are proposing instead that it be guaranteed for a period of time after the beginning of statehood and then phased out gradually at a rate, and in an environment, that will continue to attract business and jobs to Puerto Rico. Whatever accommodations may be agreed upon would be protected more fully within a statehood admission act than section 936 is now. Statehood will provide certainty not possible under the territorial status.

For the long term the best way to assure continued economic growth in Puerto Rico is statehood. Businesses grow and create jobs where there is long term stability. And nothing would do more to build business confidence in Puerto Rico than the ultimate stability of statehood.

I am going to skip the next few pages to save some time. I am going to go into page 19, however, they remain as part of my statement. But it is too long and I think I am running a little bit out of time.

The CHAIRMAN. The full statement will be put into the record.

Governor ROMERO. Thank you. I will go onto the third argument. The third argument against statehood is language. Some people argue that our Spanish heritage and language is a barrier to statehood. I could not disagree more. Puerto Rico is a bilingual society, proud of both our Hispanic and American cultures. By accepting Puerto Rico as a state and guaranteeing that we shall maintain English and Spanish as official languages and that we preserve our right to enrich and strengthen our cultural heritage, the Congress and the nation will be sending a strong message of friendship and brotherhood to all of Latin America.

The two principal languages in America are Spanish and English. It is in our national interests to improve our relations politically, economically and otherwise in Latin America. Accepting an Hispanic community as an equal partner in the nation with two senators and congressmen, and at the same time respecting our Spanish language and cultural heritage, will go a long way in helping to crumble down the walls of misunderstanding. Walls of misunderstanding that have been nourished throughout the years by a feeling in Latin American that North Americans look down upon them.

The fourth argument against statehood is simple. That a majority of the Puerto Rican people do not support it. Well that is precisely what plebiscites are all about. It has been 22 years since the last plebiscite and an entire new generation of Puerto Ricans have come on the scene. They deserve the chance to choose once and for all where Puerto Rico's future lies.

In the 1967 plebiscite, 39 percent supported statehood. Since that time our numbers have grown significantly. If I was not convinced that a new plebiscite would result in statehood, then I would not be here with you today. Mr. Chairman, members of the committee, complete the task that you have initiated. Let the people of Puerto Rico speak. Puerto Ricans will speak loud and clear for equality, for justice, for patriodic service, for better international relations, and for the future.

Puerto Rico will speak for statehood. I think it is about time we added a new star on the American flag. Thank you.

[The prepared statement of Governor Romero Barcelo follows:]

STATEMENT BY
GOVERNOR CARLOS ROMERO BARCELO
BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

Thursday, June 1, 1989

Good morning.

I am honored to be here with you on a day I believe will go down in history as a significant milestone in the admission of Puerto Rico as the United States' 51st State.

My name is Carlos Romero Barcelo. I am here today in my capacity as President of the New Progressive Party of Puerto Rico, the pro-statehood party. I served two terms as Governor of Puerto Rico and also as the Mayor of San Juan.

I am privileged to be here with Don Luis Ferre, the founder of our Party, the Chairman of the Republican Party of Puerto Rico, and a man who has been an inspiration to generations of Puerto Ricans in our quest for political equality.

I have asked Don Luis to make a few brief remarks.

(Remarks by Don Luis Ferre)

I would like to make several points in my statement today.

I want to devote my first comments to the legislation pending before this Committee. Having the Congress invite the people of Puerto Rico to express their will on their preferred status is a significant gesture. More than that, it is a governmental exercise of surpassing importance.

Congress' initiative to enact this legislation enjoys the New Progressive Party's full endorsement. We believe the people of Puerto Rico will exercise this franchise to select statehood. Whatever the result, the time has come to gauge the will of the U.S. citizens in Puerto Rico.

Mr. Chairman, you will hear from three very dedicated political leaders in these hearings.

We differ strongly on matters of policy.

But each of us loves the island of Puerto Rico and its people. Each of us wishes to promote the economic development Puerto Rico. Each of us wishes to preserve and enhance the free institutions and traditions that have made our island a beacon of liberty in the Caribbean.

Our differences have to do with how best to promote these ends. One of us believes the way is through independence. Another, that it lies in a mixed relationship with the United States known as "commonwealth." I believe the best way is the same as that chosen by our fellow citizens of the United States -- through statehood.

If Congress passes plebiscite legislation, we will campaign hard for our positions. Just as in campaigns in the states, there will be some hard punches thrown and received. But the purpose of that hard campaigning will not be for personal gain or political aggrandizement. It will be to enhance the well-being of our fellow Puerto Ricans by the best means we know.

It is important to keep this in focus. The debate over statehood versus the other two options is absorbing and, because the definitions of each status have been incorporated in the legislation, is an indispensable element. But let us not lose sight of the overall objective: that Congress enact this legislation inviting the plebiscite. Whatever the merits of our differences, this result is a common goal.

Having said that, everyone knows I represent an ever-growing number of Puerto Ricans who believe statehood is the only viable status. Faithful to my beliefs and my constituency, I advocate that cause.

These hearings are being televised in Puerto Rico, where they will be watched with intense interest. However, it will come as a surprise to many Americans that there is much debate about Puerto Rico's political future. After all, for the near-century since the Spanish-American War, the United States and Puerto Rico have shared a common bond, a common heritage, and an uncommon interweaving of our societies.

In every war since World War I, Puerto Ricans have fought under the American flag.

Nearly 200,000 Puerto Rican citizens have served the United States faithfully in this century's major wars. Many paid the ultimate price for the Cause of Democracy. In the Korean War, for example, Puerto Rico was second among all states in the number of wounded and third in the number of battle deaths.

The American naval base at Roosevelt Roads is the largest in the world outside the mainland U.S. and it is vital to our hemispheric and international security.

More than two million Puerto Ricans live, work, and vote as full-fledged citizens all across the United States, in addition to the 3.3 million Puerto Ricans who live on our island.

Our cultures exchange the best of both worlds with musicians like Pablo Casals, opera singers like Justino Diaz, actors like Jose Ferrer and Raul Julia, and athletes like Roberto Clemente, Chichi Rodriquez, and Angel Cordero, achieving fame not only in America, but around the world.

Our economies have virtually become one. More than 75 percent of our consumer goods are produced in the 50 states. More than 90 percent of our industry derives from mainland U.S. businesses.

Since 1917, Puerto Ricans have been citizens of the United States. We have 3.3 million American citizens living in Puerto Rico: more than live in 27 states now represented in Congress.

With such a close bond, with so much progress, some people ask why Puerto Rico would ever want to change the current status and become the 51st State.

The answer is simple -- because we do not have equal rights.

Puerto Ricans are a talented people, a hard-working people, a proud people.

We are U.S. citizens who have given their lives for our country and have worked hard to enrich our nation.

But we are U.S. citizens with a difference -- we are second-class citizens who have no voice in our Nation's future, who have no vote in Washington.

For more than two hundred years, the United States has been the world's shining example of democracy. And today the torch of the Statue of Liberty is burning brightly in Beijing.

So it should surprise no one that American democracy burns brightest in Puerto Rico.

We already are U.S. citizens. What we seek is to become full-fledged citizens, with the same rights and responsibilities as Americans in New Orleans or Boise or any American city or state.

I believe the case is compelling for Puerto Rico to become the 51st State.

President Bush agrees. George Bush is a strong supporter of statehood for Puerto Rico. Many Democratic and Republican members of Congress also believe that the State of Puerto Rico will strengthen this country just as Alaska and Hawaii did, and just like the other 35 states who joined the Union after the Revolution.

Let me briefly spell out the reasons why Puerto Rico should become the 51st State. And let me also discuss some of the misconceptions about what this would mean.

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The first reason goes back to the first thirteen stars on that American flag. The American Revolution was fought to give people the right to decide their own destiny. Puerto Ricans seek no less.

We are subject to the laws of Congress. But three million Puerto Ricans, three million U.S. citizens, have no vote here in Congress. That is not right. It was not right in the thirteen colonies in 1775, and it is not right in Puerto Rico in 1989.

Puerto Rico is subject to a patchwork of Federal laws, some of which are the same as they are here on the mainland, some of which are specifically written for our island. But all these laws governing Puerto Rico share a common feature -- not one Puerto Rican had a vote to determine what those laws were going to be.

If Puerto Rico becomes the 51st State, the motto which adorns the Supreme Court, "Equal Justice Under Law," will finally have real meaning on our island.

The second reason why Puerto Rico should be the 51st State is because we have earned the right to become full-fledged American citizens -- and many Puerto Ricans earned it the hard way, with their lives. I mentioned earlier the numbers of Puerto Ricans who have served and died fighting under the American flag.

But behind those numbers are heroes, Puerto Rican heroes, American heroes. When American planes sought to avenge the bloody terrorism of Muhammar Quadafi's Libya, a Puerto Rican Air Force Commander was in the eye of the raid. And Major Ribas-Dominicci gave his life for his country.

His mother did not vote for the President who gave the order to take action against Libya. She has no right to vote -- she lives in Utuado, Puerto Rico.

The United States, in its long march to overturn inequality, has historically reversed past patterns of discrimination. Other men and women have fought in the Nation's wars when they too were disenfranchised. In World Wars I and II and Korea, men and women served and died at a time when neither they nor their parents could vote. They came from Alaska and Hawaii, they came from southern states; they were below the age of 21. They could fight, but not until the 1960's and early 1970's were they granted full voting rights.

The nature of the "Commonwealth" or territorial status is undemocratic in itself. It seems preposterous to suggest that the Congress of the Nation which is the example of democracy throughout the world can sponsor, encourage or support a relationship between the fifty states and a territory of 3.3 million U.S. citizens based on permanent disenfranchisement.

The third reason for Puerto Rican statehood is international relations and national security. Just as Puerto Rico needs the United States, the United States needs Puerto Rico. Earlier I mentioned the critical role played by Roosevelt Roads Naval Base.

Puerto Rico is at the crossroads of the Caribbean and North, South, and Central America. If the security of twentieth century America focused on Europe and Asia, then it is clear that the security of twenty-first century America could well center on this hemisphere. We need look no further than Cuba, Panama, Nicaragua, and the drug lords in South America to realize the foreign policy challenges we face.

Admission of Puerto Rico as a state will demonstrate to Central America and South America, in an irrefutable way, that the United States is genuinely hospitable to Hispanic language and culture. The present territorial relationship -- using the Supreme Court's word in 1980 -- is one in which decisions are made for the territorials in the national capital, without their participation. That sends one signal to Latin America. Statehood, in which Puerto Ricans take part in choosing the American President, and elect actual voting members to the Senate and the House, sends quite another kind of signal. I do not know how many billions in foreign aid and debt forgiveness such a signal is worth, but surely it has great value for America's standing in the eyes of Latin Americans.

It will place a part of the American Union in an area of great strategic interest to the United States, the Caribbean. Granting statehood to Hawaii achieved the same result in the Pacific. A territorial outpost is one thing. Even an enormous military facility such as Roosevelt Roads cannot transform it into something organically linked to the mainland. By its very nature, statehood does that.

It will, for all practical purposes, end the debate that has sometimes erupted in the United Nations over the alleged "colonial" status of Puerto Rico.

And the fourth reason why Puerto Rico should become a state can be summed up in two words -- the future. The first thirteen of these United States made a great, free and prosperous Nation. And that Nation became greater, freer, and even more prosperous with each new state that was added. When the Louisiana Purchase was made, many Americans scratched their heads and asked what would they ever do with all that worthless land. When William Seward committed his "folly" of buying Alaska, people thought he was crazy.

But today you cannot imagine what America would be like without the states of the Louisiana Purchase, without the State of Alaska. I am confident that, in a few decades time, the citizens of the United States will look back and not be able to imagine a time when Puerto Rico was not the 51st State of our Union.

The genius of the American experiment in democracy is that the United States has never stopped growing, not just in size and population, but in the diversity, strength, and freedom of its people.

Senators serve on this panel from the great states of Oklahoma and New Mexico. How many American citizens know that those states were admitted as late as 1907 and 1912, and that one of the obstacles they had to overcome was the objection that they were bilingual? How many American citizens know that Alaska, whose Senator also sits on this panel, had to fight for admission for over 40 years and overcome the serious objection that Alaska might never be able to pay its way? For that matter, how many members know that the enabling legislation to admit Colorado to the Union was vetoed over that same issue? How many know that the State of Ohio was the first state admitted to the Union with a special grant from the federal government to ensure that the citizens of Ohio would be able to live according to the same standards enjoyed by the other states who already were members of the Union?

Puerto Rico has been a member of the Union, although on a hybrid basis, since 1898. The Puerto Rican people have been United States citizens since 1917. They have bled for their country and they have earned the opportunity that the pending bills would bestow: the chance to express their preference regarding the type of relationship they should have with the mainland with an advance knowledge that Congress has blessed their endeavor.

Equal Justice, Patriotic Service, International Relations, National Security, and the Future. All good reasons why Puerto Rico will be a great State in a great Nation.

Let me address some of the arguments some people make against Puerto Rican statehood. Just as I believe there are compelling reasons for statehood, others find arguments to oppose it.

The first argument they cite is why upset the status quo, why not just remain a territory tied to the United States, getting a free ride.

Puerto Rico has made progress as a territory. But no matter how much economic progress we make as a territory -- no matter if we call it Commonwealth -- we can never solve the fundamental problems of that status -- we will never be equal, we will always be second-class citizens without participation in the decisions that affect our Nation's future. We will never know when Congress will withdraw what it has given.

Independence would give us total control of our own destiny, but the overwhelming majority of Puerto Ricans believe our destiny, our families, and our future, are inextricably bound with that of the United States. Only a relative handful of Puerto Ricans favor independence.

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Governor Hernandez-Colon stated correctly on February 26, 1989:

> Due to our unique relationship with the United States, Puerto Rico has no participation in making laws that apply to us. A lack of democratic legitimacy in the application of those laws is a basic problem in the political structure of the Commonwealth we have been aware of since 1952.

Statehood is the challenge. It is the inevitable choice of those who place a high value on representative government, and who believe that Puerto Rico's real economic development will occur not as a territory, under the plenary power of Congress to grant or withdraw various benefits, but as a state inextricably bound to the union of other states.

From the Congress' point of view, statehood is the only option of the three under which Puerto Rico will contribute to the Federal Treasury, and not simply make claims upon it. The difference is dramatic. Under the present "commonwealth" status -- to say nothing of the proposed "enhancement" of that status -- the net deficit to the Treasury that is attributable to Puerto

Rico will be at least $160 billion over the next 25 years. The net deficit under our statehood proposal will be about $17 billion over the same 25-year period -- and in the latter years, under statehood, there should not be a deficit at all, but a surplus beginning in the eighteenth year. So fiscal prudence is one reason why Congress should wish to make statehood possible for Puerto Rico.

The second argument against statehood is economic. Opponents of statehood claim Puerto Rico would suffer serious economic side effects from the imposition of federal income taxes and the loss of Section 936 tax incentives.

The facts are exactly the opposite. It is under territorial status that Puerto Rico's economic development is uncertain. Commonwealth status is the most serious threat to Section 936. Congress may eliminate the Section, and would be under pressure to do so, in consideration of every future tax bill.

We are not proposing to end Section 936 precipitously. We are proposing instead that it be guaranteed for a period of time after the beginning of statehood and then be phased out gradually at a rate and in an environment that will continue to attract business and jobs to Puerto Rico.

Whatever accommodation may be agreed upon would be protected more fully within a statehood enabling act than Section 936 is now. Statehood would provide certainty not possible under the territorial status.

For the long term, the best way to assure continued economic growth in Puerto Rico is statehood. Businesses grow and create jobs where there is long-term stability. And nothing would do more to build business confidence in Puerto Rico than the ultimate stability of statehood.

The argument of economic chaos and additional tax burdens of statehood are repetitious of the arguments raised against statehood in the case of Tennessee, Indiana, Illinois, Michigan, Florida, Iowa, Wisconsin, Oregon, Nevada, California, Nebraska, Colorado, South Dakota, North Dakota, Montana, Washington, Idaho, New Mexico, Arizona, Alaska, and Hawaii. Particularly in Alaska and Hawaii, the last two to be admitted, the economic arguments were very similar to those used against Puerto Rico becoming a state. In Alaska they argued at a local level that statehood would be too costly and that increased taxes would destroy the economy. In Hawaii the opponents of statehood at a local level argued that increased taxes would bring economic collapse.

At page 967 of "Breakthrough from Colonialism," the principal argument in opposition to Hawaii statehood is summarized as follows:

> Statehood would bring rising expenditures and increased taxes which in turn would make it difficult to attract new industries and would also drive away from the Islands many established firms. In short, statehood would bring about the economic collapse of Hawaii.

Another argument which appears in the same book on page 969 was summarized as follows:

> Independence or Commonwealth status was preferable to statehood especially since the latter offered certain tax advantages which no state could enjoy.

And what happened when Hawaii became a state? Did Hawaii suffer an economic collapse as predicted?

No. On the contrary. In 1970, the First Hawaiian Bank published a report called "Hawaii in 1969 -- After a decade of statehood." The growth rates of Hawaii under statehood shown in that publication are incredible.

The per capita personal income jumped from $1,987 in 1959 to $3,513 in 1969.

Bank Private Demand Deposits rose from $220.3 million in 1959 to $524.2 million in 1969.

Total Personal Income rose from $1,178 million in 1959 to $2,705 million in 1967.

Civilian employment rose from 204,450 in 1959 to 294,850 in 1969.

The growth of tourism was remarkable. In 1959 visitors to Hawaii numbered 243,000. In 1969, Hawaii had 1.4 million visitors. An increase of 476 percent in ten years.

In 1959 Hawaii had 6,802 rooms for visitors. In 1969 Hawaii had 25,822 rooms.

Hotel employment in 1959 was 3,700 persons. In 1969 hotel employment was 13,150.

This kind of economic expansion is precisely what can be and should be expected in Puerto Rico as soon as we become a state.

The third argument against statehood is language. Some people argue that our Spanish heritage and language is a barrier to statehood. I could not disagree more. Puerto Rico is a bilingual society, proud of both our Hispanic and American cultures.

By accepting Puerto Rico as a state and guaranteeing that we shall maintain English and Spanish as official languages and that we preserve our right to enrich and strengthen our cultural heritage, the Congress and the Nation will be sending a strong message of friendship and brotherhood to all of Latin America.

The two principal languages in America are Spanish and English. It is in our national interest to improve our relations, politically, economically, and otherwise with Latin America. Accepting a Hispanic community as an equal partner in the Nation, with two Senators, seven Congressmen, and at the same time respecting our language and cultural heritage, will go a long way in helping to crumble down the walls of misunderstanding. Walls of misunderstanding that have been nourished through the years by a feeling in Latin America that North Americans look down upon them.

The fourth argument against statehood is simple -- that a majority of the Puerto Rican people do not support it. Well, that is what plebiscites are all about. It has been 22 years since the last plebiscite and an entire new generation of Puerto Ricans have come on the scene. They deserve the chance to choose, for once and for all, where Puerto Rico's future lies.

In the 1967 plebiscite, 39 percent supported statehood. Since that time our numbers have grown significantly. If I were not convinced that a new plebiscite will result in statehood, than I would not be here with you today.

Members of the Committee, complete the task you have initiated. Let the people of Puerto Rico speak. Puerto Ricans will speak loud and clear for equal justice, for patriotic service, for international relations, for national security, and for the future.

Puerto Rico will speak for statehood.

I think it is about time we added a new star on the American flag.

Thank you.

The CHAIRMAN. Thank you very much, Governor Romero Barcelo, for an excellent statement, also Governor Ferre. Thank you very much, gentlemen. Before we have questions we will hear from the other two parties. Next, representing PIP, or the Puerto Rican Independence Party, is Senator Ruben Berrios Martinez, Senator Fernando Martin and Representative David Noriega. Senator Fernando Martin is a Senate Minority Leader and representative David Noriega is House Minority Leader, each for the PIP.

Senator MCCLURE. Mr. Chairman I would like to interrupt for just a moment. I have been called away, and will have to be absent for just a few minutes. And I want to explain to my friends at the table that they should read nothing into the fact that I must absent myself for a brief period of time while you are making your statement. I welcome you here and I apologize for my necessary absence.

The CHAIRMAN. Senator we are glad to have you.

STATEMENT OF SENATOR RUBEN BERRIOS MARTINEZ, PRESIDENT, PUERTO RICAN INDEPENDENCE PARTY

Senator BERRIOS. Mr. Chairman, distinguished members of the committee, the problem of political status of Puerto Rico which brings us here today, while difficult to solve, is simple to define. Puerto Rico is a Latin American nation which by virtue of the Spanish-American War of 1898 came under the sovereignty of the United States. And today, 91 years after that date, United States laws and regulations enacted by the U.S. Congress in which Puerto Rico has no voting representation, apply to Puerto Rico.

Such a relationship by whatever name and whether by imposition or by consent contradicts the principle of representative democracy, is inconsistent with the values and principles of the American people, and constitutes a growing source of embarrassment to the United States in the international community. In terms of constitutional law, Puerto Rico is an unincorporated terrority or a possession of the United States subject to the plenary powers of Congress through the territorial clause of the United States Constitution.

In terms of international law, Puerto Rico is a colony in a world which through General Assembly Resolution 4767 of January 13, 1989 has declared the last decade of the century as the international decade for the irradication of colonialism. The solution to the Puerto Rican status problem is clearly dictated by international law which is part of the law of the United States. Under U.N. General Assembly Resolution 1514 (XV) of 1960 which explicitly applies to, and I quote, "all terrorities which have not yet achieved independence, the United States is specifically obliged to transfer", and I quote, "all powers to the Puerto Rican people so that they can freely determine their own future."

Repeatedly, the world community through numerous specific resolutions, has reminded the United States government of its obligations regarding Puerto Rico. But the United States government has opted up to now to disregard the standards of international law in the case of Puerto Rico. It is for us, therefore, the cause for optimism that the President of the United States has recommended that this Congress take up the matter of Puerto Rican self-determination and as Senators Johnston and McClure have included in Senate bills, 711 and 712 and explicit recognition of the applicability of international law to whatever legislation results from these hearings.

Senators Johnston and McClure have proposed three bills of law, as you know, leading to a referendum to be held in Puerto Rico between the alternatives of statehood, independence and commonwealth. Since the bill 710 has been overwhelmingly repudiated in Puerto Rico as being at best a useless popularity contest among undefined alternatives, I will direct my comments to Senate bills 711 and 712. Although I should make it clear that S. 712 in so far it contains a prior congressional commitment to fully defined alternatives is a better bill.

The provisions of these bills fall into two principal categories. First, those that refer to the terms and conditions of the referendum, the administration of the referenedum and its effects. And second those that refer to the definitions of the three status alternatives. The definitions of independence contained in S. 711 and S. 712 have been proposed by the Puerto Rican Independence Party.

Our proposals consist essentially of an initial process of transition toward the proclamation of independence characterized by full democratic guarantees and a second process of transition to take place after the proclamation of independence. This latter process will facilitate the evolution of the Puerto Rican economy from the present condition of extreme dependence to one of development based on greater economic self-sufficiency and balanced interdependence. This means that only with independence can the United States look forward to lifting the economic burden which colonial dependence imposes on the American taxpayer.

In summary we have formulated an independence proposal which will guarantee the legitimate interests of both Puerto Rico and the United States. To this end we have devised realistic solutions to complex problems related to the issues of citizenship, defense, trade relations, taxation, currency and finance, public debt and others. There is a hearing scheduled for tomorrow where we will respond to your questions concerning all these issues.

I look forward to answering the questions regarding citizenship already put forward. I am, of course, willing to answer your questions on this matter during the course of this morning as well. But I think it is more important in this opening statement to direct the thrust of my comments.

First, to the minimum substantive requirements that must be met by the three alternatives to be submitted to the people of Puerto Rico. And second to the procedural aspects of the proposed referendum. At the outset, I must state that in order to achieve an authentic process of self-determination, it is indispensable that the bills under consideration be substantially amended.

First, as concerns the substantive requirements I have already referred to, it is necessary that the alternatives in the referendum comply with the principles of international law relating to self-determination. Otherwise, the process will be a futile exercise of what might be called territorial filibustering. And, furthermore, the process would be inconsistent with the policy expressed explicitly in bills S. 711 and 712 whereby the United States recognizes the principles of international law with respect to its relationship with Puerto Rico.

Only three options, all based upon the principle of sovereignty are accepted under international law as valid alternatives to territoriality or colonialism; independence, integration or statehood and sovereign free association. Once the principle of sovriegnty is explicitly recognized as an indispensable component of each status alternative, it becomes necessary to scrutinize the definitions put forward by the Puerto Rican political parties to assure their compliance with this principle of sovereignty. Suffice it to say at this moment that the alternative presented concerning commonwealth status would continue to be in enflagrant violation of the standards mandated by international law as minimum requirements for free association.

This means that the commonwealth alternative contained in the bills does not constitute a de-colonizing alternative. In order to comply with international norms, the present commonwealth relationship requires more than cosmetic corrections. It requires that the Congress under the U.S. Constitution effectively and I quote, "dispose of the territory," renouncing the sovereign powers that emanate from the territorial clause. The argument that a status of political subordination like the existing or like the proposed commonwealth status can be legitimate because it may enjoy popular support is equivalent to arguing that consent is the only requirement for a valid contract.

I need not remind the distinguished senators that the U.S. Constitution absolutely prohibits any contract of slavery no matter how voluntary or that a contract to engage in work for a less than the mandated minimum wage is legally unenforceable even if entered into voluntarily. Such arrangements are unacceptable under the U.S. legal system because they violate either legal or constitutional principles of a higher order. Principles which are placed by society beyond the scope of the will of particular individuals because of their importance.

In the same manner, international law will not tolerate the perpetuation of political subordination even if it were freely consented to. Colonialism by consent is no solution to the problem of colonialism. Needless to say, the existence of a higher or preemptory norm of international law prohibiting colonialism under any eyes is in no small way attributable to the recognition that left to their own devices the strong will usually find ways to persuade the weak of the alleged advantages of subordination.

As regards the integration alternative, that is, statehood. This should be made clear that under international law and the prevailing circumstances of Puerto Rico, the selection of such alternative would in no way extinguish the inalienable right of the people of Puerto Rico to independence.

The second issue of fundamental importance, which I want to bring to your consideration, refers to the concept of the transfer of powers to the subject people as a prerequisite to the exercise of self-determination under international law. I repeat, the concept of the transfer of powers to the subject people as a prerequisite to the exercise of self-determination under international law. There is no doubt that such concept applies to the Puerto Rican situation. But we must also recognize as a matter of political reality that the United States has been unwilling to accept such a procedure.

Faced with this impasse, before a legitimate referendum can take place in Puerto Rico, the U.S. Congress as a minimum would have to place the Puerto Rican people in conditions similar to those which would prevail if powers were, in fact, transferred. We are talking about a concept of substantive compliance. To achieve this end, the bills under consideration would have to be substantially amended. Such amendments would have to address very important matters such as those referring to voter qualifications and to the conditions under which the political campaign leading to the referendum would be conducted.

In relation to voter qualifications, we hold that only the people of Puerto Rico and I repeat, the people of Puerto Rico, may exercise the right to self-determination in the proposed referendum. The term people has a distinct meaning in international law and it is defined by geographic, historical, ethnic, linguistic and cultural determinants among others. It follows then, that only persons born in Puerto Rico or of Puerto Rican parentage should participate as a general rule in the proposed referendum.

We understand, however, that other persons are, by conscious decision, truly Puerto Rican. We, therefore, propose that those persons who have resided in Puerto Rico for over 20 years or who established their residence prior to attaining voting age and have continued to reside in Puerto Rico and those persons married to a Puerto Rican, should also be permitted to participate in the referendum. As you may realize, these categories do not conform to the electoral laws of Puerto Rico.

Since the referendum is not a regular election, regular election laws ought not to apply. The proposed referendum is a special election for self-determination of the Puerto Rican people. And thus, only Puerto Ricans by birth, parenthood or choice, subject to strict qualifications enacted by Congress, should participate. In relation to the campaign leading to the referendum, such special provisions have to be enacted to secure a fair and equitable process.

During decades, the independence movement of Puerto Rico has been the target of systematic repression by the federal and the Puerto Rican governments. A party to the Civil Rights Commission of Puerto Rico and the Supreme Court of Puerto Rico, the government has, over the course of the last 40 to 50 years, systematically maintained illegal dossiers on more than 100,000 independent sympathizers as a basis for persecution and discrimination. Since the beginning of the century, the educational system in Puerto Rico has consistently subverted the national esteem of the Puerto Rican people; purges specially directed against Independentistas have traditionally characterized civil service and private employment in Puerto Rico.

The extreme economic dependence of Puerto Rico hinders also the free determination of Puerto Ricans. Especially those Puerto Ricans whose daily subsistence depends on federal funds. In order to counter these conditions, which are a consequence of 91 years of political subordination, in order to make possible a valid and fair process of self-determination, Congress will have to adopt special measures. We shall in due course submit specific amendments to cope with these conditions.

However, by way of example, I would like to advance some crucial considerations at this point. One, adequate public financing based on the strictest equality must be provided for the three alternatives and strict limits on contributions and expenditures from other sources, must be imposed. Two, equal time must be provided in the electronic media so that no alternative can utilize more time than is available to other alternatives at comparable times. Three, strict prohibitions with appropriate sanctions must be included concerning the use of government resources of any kind by any of the proponents of any formula including the advertisements of government achievements or the mailing of official newsletters.

Four, all FBI activities directed at followers of independence because of their political beliefs must cease immediately. The Senators should take note that the Puerto Rican Civil Rights Commission, a government agency of the Commonwealth, has provided ample evidence of intervention by the FBI in the 1967 plebiscite, designed to harass and discredit pro-independence leaders. Five, prohibition should be made for periodic communications and public notices by the federal government to the recipients of federal entitlements or transfer payments explaining the obligations to which the U.S. government is committed under the various status alternatives in connection with the particular benefits in question.

Six, strict sanctions must be imposed against any form of discrimination or threat of discrimination whether by government or by private citizens that might be used to coerce or to punish any legal expression or political preference.

Finally, Senators, I urge you as distinguished members of the Senate, to discharge the responsibility which Congress assumed by virtue of the Treaty of Paris of 1898 regarding Puerto Rico. Responsibility is a function of power, and it is the Congress of the United States that holds plenary power over Puerto Rico. The only way in which Congress can exercise its power in a manner which would be recognized as legitimate by the international community and the majority of the Puerto Rican people is by providing for a process through which the people of Puerto Rico can select from among decolonizing alternatives under fair and equitable conditions.

It is time for Justice Harlan's visionary words at the beginning of the century to prevail and I quote, "The idea that this country may acquire territories anywhere upon the earth by conquest or treaty and hold them as near colonies or provinces is wholly inconsistent with the spirit and genius as well as with the words of the Constitution", end of quote. The spirit and genius of the Constitution, the values and interests of the American people and the dignity of the Puerto Rican people demand an end to Puerto Rico's political subordination.

Thank you very much, Mr. Chairman.

[The prepared statement of Senator Berrios Martinez follows:]

STATEMENT BY RUBEN BERRIOS MARTINEZ, PRESIDENT OF THE PUERTO RICAN INDEPENDENCE PARTY TO THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

JUNE 1, 1989

MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THE COMMITTEE:

THE PROBLEM OF THE POLITICAL STATUS OF PUERTO RICO WHICH BRINGS US HERE TODAY, WHILE DIFFICULT TO SOLVE, IS SIMPLE TO DEFINE.

PUERTO RICO IS A LATIN AMERICAN NATION WHICH BY VIRTUE OF THE SPANISH AMERICAN WAR OF 1898 CAME UNDER THE SOVEREIGNTY OF THE UNITED STATES. AND TODAY, 91 YEARS AFTER THAT DATE, U.S. LAWS AND REGULATIONS ENACTED BY THE CONGRESS - IN WHICH PUERTO RICO HAS NO VOTING REPRESENTATION - APPLY TO PUERTO RICO.

SUCH A RELATIONSHIP - BY WHATEVER NAME AND WHETHER BY IMPOSITION OR CONSENT - CONTRADICTS THE PRINCIPLE OF REPRESENTATIVE DEMOCRACY, IS INCONSISTENT WITH THE VALUES AND PRINCIPLES OF THE AMERICAN PEOPLE, AND CONSTITUTES A SOURCE OF EMBARASSMENT TO THE UNITED STATES IN THE INTERNATINAL COMMUNITY.

IN TERMS OF CONSTITUTIONAL LAW, PUERTO RICO IS AN UNINCORPORATED TERRITORY OR POSSESION OF THE UNITED STATES, SUBJECT TO THE PLENARY POWERS OF CONGRESS THROUGH THE TERRITORY CLAUSE OF THE UNITED STATES CONSTITUTION. IN TERMS OF INTERNATIONAL LAW, PUERTO RICO IS A COLONY IN A WORLD WHICH THROUGH GENERAL ASSEMBLY RESOLUTION 43-47 OF JANUARY 13, 1989, HAS DECLARED THE LAST DECADE OF THIS CENTURY AS "THE INTERNATIONAL DECADE FOR THE ERRADICATION OF COLONIALISM."

THE SOLUTION TO THE PUERTO RICAN STATUS PROBLEM IS CLEARLY DICTATED BY INTERNATIONAL LAW, WHICH IS PART OF THE LAW OF THE UNITED STATES.

UNDER U.N. GENERAL ASSEMBLY RESOLUTION 1514 (XV) OF 1960, WHICH EXPLICITLY APPLIES TO ALL "TERRITORIES WHICH HAVE NOT YET ACHIEVED INDEPENDENCE," THE UNITED STATES IS SPECIFICALLY OBLIGED TO TRANSFER "ALL POWERS" TO THE PUERTO RICAN PEOPLE, SO THAT THEY CAN FREELY DETERMINE THEIR OWN FUTURE.

REPEATEDLY, THE WORLD COMMUNITY, THROUGH NUMEROUS SPECIFIC RESOLUTIONS, HAS REMINDED THE UNITED STATES GOVERNMENT OF ITS OBLIGATIONS REGARDING PUERTO RICO. BUT THE UNITED STATES GOVERNMENT HAS OPTED UP TO NOW TO DISREGARD THE STANDARDS OF INTERNATIONAL LAW IN THE CASE OF PUERTO RICO.

IT IS FOR US, THEREFORE, CAUSE FOR OPTIMISM THAT THE PRESIDENT OF THE UNITED STATES HAS RECOMMENDED THAT THIS CONGRESS TAKE UP THE MATTER OF PUERTO RICAN SELF-DETERMINATION AND THAT SENATORS JOHNSTON AND MC CLURE HAVE INCLUDED IN SENATE BILLS 711 AND 712 AN EXPLICIT RECOGNITION OF THE APPLICABILITY OF INTERNATIONAL LAW TO WHATEVER LEGISLATION RESULTS FROM THESE HEARINGS.

SENATORS JOHNSTON AND MC CLURE HAVE PROPOSED THREE BILLS LEADING TO A REFERENDUM OR REFERENDA, TO BE HELD IN PUERTO RICO, BETWEEN THE ALTERNATIVES OF STATEHOOD, INDEPENDENCE, AND COMMONWEALTH.

SINCE BILL 710 HAS BEEN OVERWHELMINGLY REPUDIATED IN PUERTO RICO AS BEING AT BEST A USELESS POPULARITY CONTEST AMONG UNDEFINED ALTERNATIVES, I WILL DIRECT MY COMMENTS TO SENATE BILLS 711 AND 712; ALTHOUGH I SHOULD MAKE CLEAR THAT S. 712, INSOFAR AS IT CONTAINS A

PRIOR CONGRESSIONAL COMMITMENT TO FULLY DEFINED ALTERNATIVES, IS A BETTER BILL.

THE PROVISIONS OF THESE BILLS FALL INTO TWO PRINCIPAL CATEGORIES: FIRST, THOSE THAT REFER TO THE TERMS AND CONDITIONS OF THE REFERENDUM, ITS ADMINISTRATION, AND ITS EFFECTS; AND SECOND, THOSE THAT REFER TO THE DEFINITIONS OF THE THREE STATUS ALTERNATIVES.

THE DEFINITIONS OF INDEPENDENCE CONTAINED IN S. 711 AND S. 712 HAVE BEEN PROPOSED BY THE PUERTO RICAN INDEPENDENCE PARTY. OUR PROPOSALS CONSIST ESSENTIALLY OF AN INITIAL PROCESS OF TRANSITION TOWARDS THE PROCLAMATION OF INDEPENDENCE, CHARACTERIZED BY FULL DEMOCRATIC GUARANTEES, AND A SECOND PROCESS OF TRANSITION TO TAKE PLACE AFTER THE PROCLAMATION OF INDEPENDENCE. THIS LATTER PROCESS WILL FACILITATE THE EVOLUTION OF THE PUERTO RICAN ECONOMY FROM THE PRESENT CONDITION OF EXTREME DEPENDENCE TO ONE OF DEVELOPMENT BASED ON GREATER ECONOMIC SELF-SUFFICIENCY AND BALANCED INTERDEPENDENCE. THIS MEANS THAT ONLY WITH INDEPENDENCE CAN THE UNITED STATES LOOK FORWARD TO LIFTING THE ECONOMIC BURDEN WHICH COLONIAL DEPENDENCE IMPOSES ON THE AMERICAN TAXPAYER.

IN SUMMARY, WE HAVE FORMULATED AN INDEPENDENCE PROPOSAL WHICH WILL GUARANTEE THE LEGITIMATE INTERESTS OF BOTH PUERTO RICO AND THE UNITED STATES. TO THIS END, WE HAVE DEVISED REALISTIC SOLUTIONS TO COMPLEX PROBLEMS RELATED TO THE ISSUES OF CITIZENSHIP, DEFENSE, TRADE RELATIONS, TAXATION, CURRENCY AND FINANCE, PUBLIC DEBT, AND OTHERS.

THERE IS A HEARING SCHEDULED FOR TOMORROW WHERE WE WILL RESPOND TO YOUR QUESTIONS CONCERNING ALL THESE ISSUES. I AM OF COURSE WILLING TO ANSWER YOUR QUESTIONS ON THIS MATTER DURING THE COURSE OF THIS MORNING AS WELL; BUT I THINK IT MORE IMPORTANT, IN THIS OPENING STATEMENT, TO DIRECT THE THRUST OF MY COMMENTS, FIRST, TO THE MINIMUM SUBSTANTIVE REQUIREMENTS THAT MUST BE MET BY THE THREE ALTERNATIVES TO BE SUBMITTED TO THE PEOPLE OF PUERTO RICO, AND SECOND, TO THE PROCEDURAL ASPECTS OF THE PROPOSED REFERENDUM.

AT THE OUTSET I MUST STATE THAT IN ORDER TO ACHIVE AN AUTHENTIC PROCESS OF SELF-DETERMINATION, IT IS INDISPENSABLE THAT THE BILLS BEFORE YOU BE SUBSTANTIALLY AMENDED.

FIRST, AS CONCERNS THE SUBSTANTIVE REQUIREMENTS, IT IS NECESSARY THAT THE ALTERNATIVES IN THE REFERENDUM COMPLY WITH THE PRINCIPLES OF INTERNATIONAL LAW RELATING TO SELF-DETERMINATION. OTHERWISE, THE PROCESS WOULD BE A FUTILE EXERCISE OF WHAT MIGHT BE CALLED TERRITORIAL FILIBUSTERING. AND FURTHERMORE, THE PROCESS WOULD BE INCONSISTENT WITH THE POLICY EXPRESSED IN BILLS S. 711 AND S. 712, WHEREBY THE UNITED STATES RECOGNIZES THE PRINCIPLES OF INTERNATIONAL LAW WITH RESPECT TO ITS RELATIONSHIP TO PUERTO RICO.

ONLY THREE OPTIONS, ALL BASED ON THE PRINCIPLE OF SOVEREIGNTY, ARE ACCEPTED UNDER INTERNATIONAL LAW AS VALID ALTERNATIVES TO COLONIALISM: INDEPENDENCE, INTEGRATION, AND SOVEREIGN FREE ASSOCIATION.

ONCE THE PRINCIPLE OF SOVEREIGNTY IS EXPLICITLY RECOGNIZED AS AN INDISPENSABLE COMPONENT OF EACH STATUS ALTERNATIVE, IT BECOMES

NECESSARY TO SCRUTINIZE THE DEFINITIONS PUT FORWARD BY THE PUERTO RICAN POLITICAL PARTIES TO ASSURE THEIR COMPLIANCE WITH THIS PRINCIPLE. SUFFICE IT TO SAY AT THIS MOMENT THAT THE ALTERNATIVE PRESENTED CONCERNING COMMONWEALTH STATUS WOULD CONTINUE TO BE A FLAGRANT VIOLATION OF THE STANDARDS MANDATED BY INTERNATIONAL LAW AS MINIMUM REQUIREMENTS FOR SOVEREIGN FREE ASSOCIATION. THUS THE COMMONWEALTH ALTERNATIVE CONTAINED IN THE BILLS DOES NOT CONSTITUTE A DECOLONIZING ALTERNATIVE. IN ORDER TO COMPLY WITH INTERNATIONAL NORMS, THE PRESENT COMMONWEALTH RELATIONSHIP REQUIRES MORE THAN COSMETIC CORRECTIONS; IT REQUIRES THAT THE CONGRESS, UNDER THE U.S. CONSTITUTION, EFFECTIVELY "DISPOSE OF THE TERRITORY", RENOUNCING THE SOVEREIGN POWERS THAT EMANATE FROM THE TERRITORY CLAUSE.

THE ARGUMENT THAT A STATUS OF POLITICAL SUBORDINATION - LIKE THE EXISTING OR THE NEWLY PROPOSED COMMONWEALTH STATUS - CAN BE LEGITIMATE BECAUSE IT MAY ENJOY POPULAR SUPPORT IS EQUIVALENT TO ARGUING THAT CONSENT IS THE ONLY REQUIREMENT FOR A VALID CONTRACT. I NEED NOT REMIND THE DISTINGUISHED SENATORS THAT THE U.S. CONSTITUTION ABSOLUTELY PROHIBITS ANY CONTRACT OF SLAVERY - NO MATTER HOW VOLUNTARY - OR THAT A CONTRACT TO ENGAGE IN WORK FOR LESS THAN THE MANDATED MINIMUM WAGE IS LEGALLY UNENFORCEABLE, EVEN IF ENTERED INTO VOLUNTARILY. SUCH ARRANGEMENTS ARE UNACCEPTABLE UNDER THE U.S. LEGAL SYSTEM BECAUSE THEY VIOLATE HIGHER LEGAL OR CONSTITUTIONAL PRINCIPLES, PRINCIPLES WHICH ARE PLACED BY SOCIETY BOYOND THE SCOPE OF THE WILL OF PARTICULAR INDIVIDUALS

IN THE SAME MANNER, INTERNATIONAL LAW WILL NOT TOLERATE THE PERPETUATION OF POLITICAL SUBORDINATION EVEN IF IT WERE FREELY CONSENTED TO. COLONIALISM BY CONSENT IS NO SOLUTION TO THE PROBLEM OF COLONIALISM. NEEDLESS TO SAY, THE EXISTENCE OF A HIGHER OR PEREMPTORY NORM OF INTERNATIONAL LAW PROHIBITING COLONIALISM UNDER ANY GUISE, IS IN NO SMALL WAY ATTRIBUTABLE TO THE RECOGNITION THAT LEFT TO THEIR OWN DEVICES, THE STRONG WILL USUALLY FIND WAYS TO PERSUADE THE WEAK OF THE ALLEGED ADVANTAGES OF SUBORDINATION.

AS REGARDS THE INTEGRATION ALTERNATIVE - THAT IS, STATEHOOD - IT SHOULD BE MADE CLEAR THAT UNDER INTERNATIONAL LAW, IN THE PREVAILING CIRCUMSTANCES OF PUERTO RICO, THE SELECTION OF SUCH AN ALTERNATIVE WOULD IN NO WAY EXTINGUISH THE INALIENABLE RIGHT OF THE PEOPLE OF PUERTO RICO TO INDEPENDENCE.

THE SECOND ISSUE OF FUNDAMENTAL IMPORTANCE WHICH I WANT TO BRING TO YOUR CONSIDERATION REFERS TO THE CONCEPT OF THE TRANSFER OF POWERS TO THE SUBJECT PEOPLE AS A PREREQUISITE TO THE EXERCISE OF SELF-DETERMINATION UNDER INTERNATIONAL LAW. THERE IS NO DOUBT THAT SUCH CONCEPT APPLIES TO THE PUERTO RICAN SITUATION; BUT AS A MATTER OF POLITICAL REALITY WE MUST ALSO FACE THE FACT THAT THE UNITED STATES HAS BEEN UNWILLING TO ACCEPT SUCH A PROCEDURE. FACED WITH THIS IMPASSE, BEFORE A LEGITIMATE REFERENDUM CAN TAKE PLACE IN PUERTO RICO, THE U.S. CONGRESS - AS A MINIMUM - WOULD HAVE TO PLACE THE PUERTO RICAN PEOPLE IN CONDITIONS SIMILAR TO THOSE WHICH WOULD PREVAIL IF POWERS WERE IN FACT TRANSFERRED. TO ACHIEVE THIS END, THE BILLS UNDER

CONSIDERATION WOULD HAVE TO BE SUBSTANTIALLY AMENDED. SUCH AMENDMENTS WOULD HAVE TO ADDRESS VERY IMPORTANT MATTERS SUCH AS THOSE REFERRING TO VOTER QUALIFICATIONS AND TO THE CONDITIONS UNDER WHICH THE POLITICAL CAMPAIGN LEADING TO THE REFERENDUM WOULD BE CONDUCTED.

IN RELATION TO VOTER QUALIFICATIONS, WE HOLD THAT ONLY THE PEOPLE OF PUERTO RICO MAY EXERCISE THE RIGHT TO SELF-DETERMINATION IN THE PROPOSED REFERENDUM.

THE TERM "PEOPLE" HAS A DISTINCT MEANING IN INTERNATINAL LAW, DEFINED BY GEOGRAPHIC, HISTORICAL, ETHNIC, LINGUISTIC, AND CULTURAL DETERMINANTS. IT FOLLOWS THEN, THAT ONLY PERSONS BORN IN PUERTO RICO OR OF PUERTO RICAN PARENTAGE SHOULD PARTICIPATE IN THE PROPOSED REFERENDUM. WE UNDERSTAND, HOWEVER, THAT OTHER PERSONS ARE BY CONSCIOUS DECISION TRULY PUERTO RICAN. WE THEREFORE PROPOSE THAT THOSE PERSONS WHO HAVE RESIDED IN PUERTO RICO FOR OVER TWENTY YEARS, OR WHO ESTABLISHED THEIR RESIDENCE PRIOR TO ATTAINING VOTING AGE AND HAVE CONTINUED TO RESIDE IN PUERTO RICO, AND THOSE PERSONS MARRIED TO A PUERTO RICAN ALSO BE PERMITTED TO PARTICIPATE IN THE REFERENDUM.

AS YOU MAY REALIZE, THESE CATEGORIES DO NOT CONFORM TO THE ELECTORAL LAWS OF PUERTO RICO. SINCE THE REFERENDUM IS NOT A REGULAR ELECTION, REGULAR ELECTION LAWS OUGHT NOT TO APPLY. THE PROPOSED REFERENDUM IS A SPECIAL ELECTION FOR THE SELF-DETERMINATION OF THE PUERTO RICAN PEOPLE; AND THUS ONLY PUERTO RICANS BY BIRTH, PARENTHOOD OR CHOICE, SUBJECT TO STRICT QUALIFICATIONS ENACTED BY CONGRESS, SHOULD PARTICIPATE.

IN RELATION TO THE CAMPAIGN LEADING TO THE REFERENDUM, SPECIAL PROVISIONS HAVE TO BE ENACTED TO SECURE A FAIR AND EQUITABLE PROCESS. DURING DECADES, THE INDEPENDENCE MOVEMENT IN PUERTO RICO HAS BEEN THE TARGET OF SYSTEMATIC REPRESSION BY THE FEDERAL AND THE PUERTO RICAN GOVERNEMENTS. ACCORDING TO THE CIVIL RIGHTS COMMISSION AND THE SUPREME COURT OF PUERTO RICO, THE GOVERNMENT HAS OVER THE COURSE OF THE LAST FORTY TO FIFTY YEARS SYSTEMATICALLY MAINTAINED ILLEGAL DOSSIERS ON MORE THAN 100,000 INDEPENDENCE SYMPATHIZERS AS A BASIS FOR PERSECUTION AND DISCRIMINATION. SINCE THE BEGINNING OF THE CENTURY THE EDUCATIONAL SYSTEM IN PUERTO RICO HAS CONSISTENTLY SUBVERTED THE NATIONAL ESTEEM OF THE PUERTO RICAN PEOPLE. PURGES - ESPECIALLY AGAINST THE INDEPENDENTISTAS - HAVE TRADITIONALLY CHARACTERIZED CIVIL SERVICE AND PRIVATE EMPLOYMENT IN PUERTO RICO. THE EXTREME ECONOMIC DEPENDENCE ALSO HINDERS THE FREE DETERMINATION OF PUERTO RICANS, ESPECIALLY OF THOSE WHOSE DAILY SUBSISTENCE DEPENDS ON FEDERAL FUNDS.

IN ORDER TO COUNTER THESE CONDITIONS - WHICH ARE A CONSEQUENCE OF 91 YEARS OF POLITICAL SUBORDINATION - IN ORDER TO MAKE POSSIBLE A VALID AND FAIR PROCESS OF SELF-DETERMINATION, CONGRESS WILL HAVE TO ADOPT SPECIAL MEASURES.

WE SHALL IN DUE COURSE SUBMIT SPECIFIC AMENDMENTS TO COPE WITH THESE CONDITIONS. HOWEVER, BY WAY OF EXAMPLE WE WOULD LIKE TO ADVANCE SOME CRUCIAL CONSIDERATIONS:

1. ADEQUATE PUBLIC FINANCING BASED ON THE STRICTEST EQUALITY MUST BE PROVIDED FOR THE THREE ALTERNATIVES AND STRICT LIMITS ON CONTRIBUTIONS AND EXPENDITURES FROM OTHER SOURCES MUST BE IMPOSED.

2. EQUAL TIME MUST BE PROVIDED IN THE ELECTRONIC MEDIA SO THAT NO ALTERNATIVE CAN UTILIZE MORE TIME THAT IS AVAILABLE TO THE OTHER ALTERNATIVES AT COMPARABLE TIMES.

3. STRICT PROHIBITIONS WITH APPROPRIATE SANCTIONS MUST BE INCLUDED CONCERNING THE USE OF GOVERNMENT RESOURCES OF ANY KIND BY ANY OF THE PROPONENTS OF ANY FORMULA, INCLUDING THE ADVERTISEMENT OF GOVERNMENT "ACHIEVEMENTS" AND THE MAILING OF "OFFICIAL NEWSLETTERS".

4. ALL F.B.I. ACTIVITIES DIRECTED AT FOLLOWERS OF INDEPENDENCE BECAUSE OF THEIR POLITICAL BELIEFS MUST CEASE IMMEDIATELY. THE SENATORS SHOULD TAKE NOTE THAT THE PUERTO RICO CIVIL RIGHTS COMMISSION - A GOVERNMENT AGENCY OF THE COMMONWEALTH - HAS PROVIDED AMPLE EVIDENCE OF INTERVENTION BY THE F.B.I. IN THE 1967 PLEBISCITE DESIGNED TO HARASS AND DISCREDIT PRO-INDEPENDENCE LEADERS

5. PROVISION SHOULD BE MADE FOR PERIODIC COMMUNICATIONS AND PUBLIC NOTICES BY THE FEDERAL GOVERNMENT TO THE RECIPIENTS OF FEDERAL ENTITLEMENTS OR TRANSFER PAYMENTS EXPLAINING THE OBLIGATIONS TO WHICH THE U.S. GOVERNMENT IS COMMITTED UNDER THE VARIOUS STATUS ALTERNATIVES IN CONNECTION WITH THE PARTICULAR BENEFITS IN QUESTION.

6. STRICT SANCTIONS MUST BE IMPOSED AGAINST ANY FORM OF DISCRIMINATION, OR THREAT OF DISCRIMINATION, WHETHER BY GOVERNMENT OR BY PRIVATE CITIZENS, THAT MIGHT BE USED TO COERCE OR TO PUNISH ANY LEGAL EXPRESSION OF POLITICAL PREFERENCE.

FINALLY, I URGE YOU, DISTINGUISHED MEMBERS OF THE SENATE, TO DISCHARGE THE RESPONSIBILITY WHICH CONGRESS ASSUMED BY VIRTUE OF THE

TREATY OF PARIS OF 1898 REGARDING PUERTO RICO. RESPONSIBILITY IS A FUNCTION OF POWER, AND IT IS THE CONGRESS OF THE UNITED STATES THAT HOLDS PLENARY POWERS OVER PUERTO RICO. THE ONLY WAY IN WHICH CONGRESS CAN EXERCISE ITS POWER IN A MANNER WHICH WILL BE RECOGNIZED AS LEGITIMATE BY THE INTERNATIONAL COMMUNITY AND THE MAJORITY OF THE PEOPLE OF PUERTO RICO IS BY PROVIDING FOR A PROCESS THROUGH WHICH THE PEOPLE OF PUERTO RICO CAN SELECT FROM AMONG DECOLONIZING ALTERNATIVES UNDER FAIR AND EQUITABLE CONDITIONS.

IT IS TIME FOR JUSTICE HARLAN'S VISIONARY WORDS AT THE BEGINNING OF THE CENTURY TO PREVAIL:

> THE IDEA THAT THIS COUNTRY MAY ACQUIRE TERRITORIES ANYWHERE UPON THE EARTH, BY CONQUEST OR TREATY, AND HOLD THEM AS MERE COLONIES OR PROVINCES ... IS WHOLLY INCONSISTENT WITH THE SPIRIT AND GENIUS, AS WELL AS WITH THE WORDS OF THE CONSTITUTION.

THE SPIRIT AND GENIUS OF THE CONSTITUTION, THE VALUES AND INTERESTS OF THE AMERICAN PEOPLE, AND THE DIGNITY OF THE PUERTO RICAN PEOPLE DEMAND AN END TO PUERTO RICO'S POLITICAL SUBORDINATION.

The **CHAIRMAN**. Thank you very much for an excellent statement, Senator Berrios. We now have a vote on the floor of the Senate. I think it is an appropriate time for us to go over and vote and return.

Senator **BRADLEY**. Mr. Chairman, would you then presume to then reconvene and go through lunch and also through the afternoon?

The **CHAIRMAN**. No; we will break for lunch at 12:30 p.m. or so and come back at 2 p.m.

[Recess.]

The **CHAIRMAN**. If you would ask those who are in the hall to come in so that we can close the doors. It is now my pleasure to introduce the Governor of Puerto Rico, Rafael Hernandez Colon; he is accompanied by three distinguished members, Jaime Fuster, the Resident Commissioner of Puerto Rico with whom we work very closely here in the Congress; Miguel Hernandez Agosto, President of the Senate of Puerto Rico; and Ronny Jarabo, who is speaker of the House of Puerto Rico.

Governor, we are pleased to have you and your colleagues here and look forward to hearing from you.

STATEMENT OF HON. RAFAEL HERNANDEZ-COLON, GOVERNOR OF THE COMMONWEALTH OF PUERTO RICO

Governor **HERNANDEZ-COLON**. Mr. Chairman we are very glad to be here.

Muy buenos diaz Senores Senadores, es un gran honor encontrarme ante ustedes en esta ocasion historica donde se discute el futuro de mi pueblo: el pueblo Puertorriqueno. Mi mas cordial saludo a todos. Procedo ahora en Ingles.

The **CHAIRMAN**. I understood that by the way.

Governor **HERNANDEZ-COLON**. During this half of this century, the people of Puerto Rico, then under colonial status, were polarized between those seeking total separation from the United States and those wanting total assimilation to the United States. Violence, turmoil and bitterness characterized the politics of that period.

In 1952 the people of Puerto Rico and the Congress designed a way out of that dilemma: the commonwealth relationship. This solution gained recognition from the United Nations.

Commonwealth arose as the answer to end the colonial dilemma, solving the difficulties in the other options. Independence was and is impracticable for two reasons. It would wreck the Puerto Rican economy and it runs counter to the unswerving desire of the people of Puerto Rico to maintain their American citizenship and live in permanent union with the United States. It will also disrupt—Statehood was and is unworkable because it would also disrupt the Puerto Rican economy and does not take into account another given of the Puerto Rican reality: the fact that Puerto Ricans form a people, a distinct society, with its own culture, ethnos and language.

This explains the nature of the proposals before you from statehood and independence advocates. Both try to meet the difficulties outlined by injecting generous doses of commonwealth into their proposals, by delaying the take-off from commonwealth for long periods indeed.

The process produces some strange results. You are not asked to admit a state in the classic, historical and constitutional sense, but rather a body politic aspiring someday to become a state. That unique political entity could not possibly be admitted, as the Constitution requires, on an equal footing with other states, for it would not even be able to keep its own footing. A most singular kind of statehood is being sought from you. It would be, on the one hand, a sort of statehood on crutches, a state requiring special arrangements for an economy which is less than half of that of the poorest state in the Union.

On the other hand, this most unequal of states would resist to melt or blend; it would be a state with a different primary language, marching under its own flag, apart from the United States in international sports competitions. This is the first time that one finds such a startling departure from constitutionally sanctioned, traditional enabling acts enacted by this Congress since the thirteen colonies formed the Union.

The independence proposal is equally flawed. A republic composed mostly of citizens of another state is quite difficult to imagine.

This brings us to the real world. The commonwealth relationship designed in 1952 has proved to be a workable, down-to-earth way of meeting the aspirations of the Puerto Rican people: the desire for permanent union with the United States, the wish for the fullest autonomy compatible with such desire, the need for preserving their distinct historical heritage and cultural personality, and the necessity for accelerating their economic and social development.

Commonwealth provided the necessary flexibility from the U.S. fiscal system in order to implement economic development strategies to rescue the Puerto Rican people from hopeless dependency upon the United States.

History has not betrayed our expectations. Through the commonwealth association with the United States, Puerto Rico has been able to overcome abject poverty, its small size and remote geographic location, and a lack of natural resources. Under commonwealth, we have been able to achieve the highest standard of living in Latin America.

Puerto Rico's economic development has been possible through the optimal utilization of the tools available only under commonwealth, such as Section 936. Through the fiscal autonomy that the Congress has granted us, the island was able to attract investment capital and create jobs and opportunity on an island desperate for growth. Today, the livelihood of nearly 300,000 of the island's 900,000 workers depends on the continuity and stability of this favorable business climate. From a per capita income of only $180 in the 1940s, Puerto Rico now surpasses $5,000. Production from Puerto Rican factories serves world markets, particularly in pharmaceuticals, medical devices and electronics.

Why then does commonwealth need to be enhanced? We have come a long way, but we still have a long way to go. Our per capita income is still only one-third that of the United States and our unemployment rate is three times as high.

As we enter a new century and face the challenges of globalized economies in an ever-more interdependent world, broader autonomy is necessary so that we may expand the self-sustaining character of the Puerto Rican economy.

There is a need for a clear federal policy to support the more assertive role of Puerto Rico in the Caribbean region. There is a desire on the part of a majority of the Puerto Rican people for a broader autonomic framework upon which they can better realize their full potential as a people.

In what ways do the bills before you enhance commonwealth? In four main ways: by enlarging the political autonomy of the people of Puerto Rico, by accelerating their economic and social development, by providing for their increased participation in the United States government decisions affecting them, and by safe-guarding their distinct cultural and historical heritage.

Of the bills before you, S. 712 is our choice because it is meant to provide the voters in Puerto Rico the specific and concrete terms upon which to make the fundamental decisions required of them. In framing the proposal for an enhanced commonwealth under S. 712, we propose the precise amendments to the federal laws which clearly define the scope of an enhancement and which make the bill self-executing upon approval by the Congress and by the people of Puerto Rico.

We would hope that this committee will hold the statehood proposal to this same standard, which it does not meet at present, particularly in the vital economic transition provisions which are totally dependent upon future enactments by Congress of provisions of doubtful constitutionality. The people of Puerto Rico need to know the concrete and definite terms of statehood in order to make an informed decision on matters essential to their well-being.

One particular element of our definition of enhanced commonwealth should be considered at the outset: permanent union. Commonwealth supporters conceive of our relationship to the United States as one of a permanent nature. We do not see Puerto Rico as destined to be a state of the Union or an independent nation. Such is our political will. From a legal point of view, this union finds its permanence in the constitutionally irreversible bond of our American citizenship and in the compact of union between the people of Puerto Rico and Congress which was not entered upon for a limited time period, but rather for a relationship enduring into the future only to be changed through mutual consent.

We are fully aware, however, that Puerto Ricans have a right to aspire to another political status. This is inherent in their rights as free people. Commonwealth supporters are second to none in the defense of these rights of all Puerto Ricans. The permanence on which we base our relationship is the only permanence possible in the political relationships of democratic peoples, that their constitutional institutions endure stably into the future and that when they decide to change them, they will follow the established constitutional and democratic processes to bring about any desire to change.

Under S. 712, the political autonomy of the people of Puerto Rico within permanent union with the United States would be furthered in several ways. Many federal laws are applicable in Puerto Rico today in spite of the fact that they are not attuned to the particular economic, cultural, demographic, and other conditions of the commonwealth. Under our proposal, federal laws, rules and regulations which are inconsistent with the described policy, now generally applied to Puerto Rico by including us in the definition of the word "state," would be inapplicable to Puerto Rico, unless Congress makes a specific finding that there is an overriding national interest in the applicability of such law to the Commonwealth of Puerto Rico. Any federal law pertaining to foreign relations, defense, national security, citizenship and grants and services to individuals citizens, however, would continue to apply to the commonwealth just as they apply in the states.

The political autonomy of Puerto Rico would also be bolstered by giving it economic jurisdiction over the waters, seabed and submerged lands surrounding Puerto Rico; by restoring its authority to issue United States passports; by strengthening its law enforcement capabilities; by enabling the government of the United States, or any agency thereof, to delegate to the commonwealth the total or partial responsibility for functions now performed by the federal government; and by promoting the international interest of Puerto Rico to the extent compatible with the foreign relations and security interests of the United States.

The economic and social development of the people of Puerto Rico would be accelerated by securing for them more equitable participation in all federal programs that provide grants or services to citizens of the United States as individuals; by authorizing the Commonwealth to consolidate federal grant-in-aid programs; by endowing the commonwealth with authority to impose tariff duties on foreign-origin products imported into Puerto Rico, when consistent with the international obligations of the United States.

By enabling the commonwealth to establish regulation over maritime transportation to assure the lowest possible rates; by promoting the creation of intellectual property in Puerto Rico; and by the United States encouraging other countries to consider Puerto Rico as a developing area for purposes of their general or regional systems of trade preferences.

Increased participation by the people of Puerto Rico in United States government decisions affecting them would also be assured, and finally, the distinct historical heritage and cultural identity of the people of Puerto Rico would be safeguarded through federal policy.

These enhancements of commonwealth status would provide a broader framework of autonomy under which the people of Puerto Rico could accelerate their economic and social development, affirm their cultural identity, and assume a more pro-active role in the Caribbean region.

They would go a long way toward updating what was a brilliant solution to the dilemma of a people seeking their place in dignity within the American constitutional system—a people unwilling to give up their identity and culture, and the pursuit of their full economic potential through statehood or to give up their citizenship, economic potential and permanent union with the United States through independence.

These enhancements will go a long way in enabling us as a people and as American citizens to provide a future together with the United States where we can be true partners contributing in an increasing way, not only to our progress and well-being, but also to the broader goals of the United States, such as the economic development of the Caribbean Basin.

Already we are engaged in a task together with the United States government whereby we have promoted twin plants between Puerto Rico and 11 Caribbean countries. This effort represents investments mounting to $165 million over the past three years, creating 10,327 jobs in these 11 countries.

In this, our contribution to regional development and national security, we brought to Grenada four manufacturing plants twinned with Puerto Rico. With our Section 936 resources we are financing housing developments in Jamaica and airlines serving this and other points in the Caribbean region. Young men and women from all over the Caribbean are being trained in Puerto Rico. Not only are Caribbean economies being strengthened in a region where the Cuban model vies for leadership, but more importantly, democracy is being strengthened.

A stronger commonwealth economy, one better able to function under the economic dynamics of a new century—a politically stronger commonwealth will open the way to greater achievements in Puerto Rico and the region. And it will open the way for the people of Puerto Rico to feel the pride that through their efforts and their devotion to the values shared with the United States, they are helping to build a better future for themselves and their fellow citizens of the United States of America.

Thank you very much, Mr. Chairman.

[The prepared statement of Governor Hernandez-Colon follows:]

STATEMENT BY

HONORABLE RAFAEL HERNANDEZ COLON
GOVERNOR OF THE COMMONWEALTH OF PUERTO RICO

ON S.712
TO PROVIDE FOR A REFERENDUM ON
THE POLITICAL STATUS OF PUERTO RICO

BEFORE THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

JUNE 1, 1989
9:30 A.M.

Muy buenos díaz Señores Senadores, es un gran honor encontrarme ante ustedes en esta ocasión histórica donde se discute el futuro de mi pueblo: el pueblo puertorriqueño. Mi más cordial saludo a todos. Procedo ahora en inglés.

During the first half of this century, the people of Puerto Rico, then under colonial status, were polarized between those seeking total separation from the United States and those wanting total assimilation to the United States. Violence, turmoil and bitterness characterized the politics of that period.

In 1952 the people of Puerto Rico and Congress designed the way out of that dilemma: the Commonwealth relationship. This solution gained recognition from the United Nations.

Commonwealth arose as the answer to end the colonial dilemma, solving the difficulties in the other options. Independence was and is impracticable for two reasons. It would wreck the Puerto Rican economy and it runs counter to the unswerving desire of the people of Puerto Rico to maintain their American citizenship and live in permanent union with the United States. Statehood was and is unworkable because it would also disrupt the Puerto Rican economy and does not take into account another given of the Puerto Rican reality: the fact that Puerto Ricans form a people, a distinct society, with its own culture, ethnos and language.

This explains the nature of the proposals before you from statehood and independence advocates. Both try to meet

THE DIFFICULTIES OUTLINED BY INJECTING GENEROUS DOSES OF COMMONWEALTH INTO THEIR PROPOSALS, BY DELAYING THE TAKE-OFF FROM COMMONWEALTH FOR LONG PERIODS INDEED.

THE PROCESS PRODUCES SOME STRANGE RESULTS. YOU ARE NOT ASKED TO ADMIT A STATE IN THE CLASSIC, HISTORICAL AND CONSTITUTIONAL SENSE, BUT RATHER A BODY POLITIC ASPIRING SOMEDAY TO BECOME A STATE. THAT UNIQUE POLITICAL ENTITY COULD NOT POSSIBLY BE ADMITTED, AS THE CONSTITUTION REQUIRES, ON AN EQUAL FOOTING WITH OTHER STATES, AS IT WOULD NOT EVEN BE ABLE TO KEEP ITS OWN FOOTING. A MOST SINGULAR KIND OF STATEHOOD IS BEING SOUGHT FROM YOU. IT WOULD BE, ON THE ONE HAND, A SORT OF STATEHOOD ON CRUTCHES, A STATE REQUIRING SPECIAL ARRANGEMENTS FOR AN ECONOMY WHICH IS LESS THAN HALF OF THAT OF THE POOREST STATE IN THE UNION. ON THE OTHER HAND, THIS MOST UNEQUAL OF STATES WOULD RESIST TO MELT OR BLEND, IT WOULD BE A STATE WITH A DIFFERENT PRIMARY LANGUAGE, MARCHING UNDER ITS OWN FLAG, APART FROM THE UNITED STATES IN INTERNATIONAL SPORTS COMPETITIONS. THIS IS THE FIRST TIME THAT ONE FINDS SUCH A STARTLING DEPARTURE FROM CONSTITUTIONALLY SANCTIONED, TRADITIONAL ENABLING ACTS ENACTED BY THIS CONGRESS SINCE THE THIRTEEN COLONIES FORMED THE UNION.

THE INDEPENDENCE PROPOSAL IS EQUALLY FLAWED. A REPUBLIC COMPOSED MOSTLY OF CITIZENS OF ANOTHER STATE IS QUITE DIFFICULT TO IMAGINE.

THIS BRINGS US TO THE REAL WORLD. THE COMMONWEALTH RELATIONSHIP DESIGNED IN 1952 HAS PROVED TO BE A WORKABLE, DOWN-TO-EARTH WAY OF MEETING THE ASPIRATIONS OF THE PUERTO

Rican people: the desire for permanent union with the United States, the wish for the fullest autonomy compatible with such desire, the need for preserving their distinct historical heritage and cultural personality, and the necessity for accelerating their economic and social development.

Commonwealth provided the necessary flexibility from the U.S. fiscal system in order to implement economic development strategies to rescue the Puerto Rican people from hopeless dependency upon the United States.

History has not betrayed our expectations. Through the Commonwealth association with the United States, Puerto Rico has been able to overcome abject poverty, its small size and remote geographic location, and a lack of natural resources. Under Commonwealth we have been able to achieve the highest standard of living in Latin America.

Puerto Rico's economic development has been possible through the optimal utilization of the tools available only under Commonwealth, such as Section 936. Through the fiscal autonomy that the Congress has granted us, the island was able to attract investment capital and create jobs and opportunity on an island desperate for growth. Today, the livelihood of nearly 300,000 of the island's 900,000 workers depends on the continuity and stability of this favorable business climate. From a per capita income of only $180 in the 1940s, Puerto Rico now surpasses $5,000. Production from Puerto Rican factories serves world markets, particularly in pharmaceuticals, medical devices, and electronics.

Why then does Commonwealth need to be enhanced?

We have come a long way, but we still have a long way to go.

Our per capita income is still only one-third that of the United States and our unemployment rate is three times as high.

As we enter a new century and face the challenges of globalized economies in an ever-more interdependent world, broader autonomy is necessary so that we may expand the self-sustaining character of the Puerto Rican economy.

There is a need for a clear federal policy to support the more assertive role of Puerto Rico in the Caribbean region.

There is a desire on the part of a majority of the Puerto Rican people for a broader autonomic framework upon which they can better realize their full potential as a people.

In what ways do the bills before you enhance Commonwealth? In four main ways: by enlarging the political autonomy of the people of Puerto Rico, by accelerating their economic and social development, by providing for their increased participation in the United States government decisions affecting them, and by safeguarding their distinct cultural and historical heritage.

Of the bills before you, S.712 is our choice because it is meant to provide the voters in Puerto Rico the specific and concrete terms upon which to make the fundamental

DECISIONS REQUIRED OF THEM. IN FRAMING THE PROPOSAL FOR AN ENHANCED COMMONWEALTH UNDER S.712, WE PROPOSE THE PRECISE AMENDMENTS TO THE FEDERAL LAWS WHICH CLEARLY DEFINE THE SCOPE OF THE ENHANCEMENT AND WHICH MAKE THE BILL SELF-EXECUTING UPON APPROVAL BY THE CONGRESS AND BY THE PEOPLE OF PUERTO RICO.

WE WOULD HOPE THAT THIS COMMITTEE WILL HOLD THE STATEHOOD PROPOSAL TO THIS SAME STANDARD, WHICH IT DOES NOT MEET AT PRESENT, PARTICULARLY IN THE VITAL ECONOMIC TRANSITION PROVISIONS WHICH ARE TOTALLY DEPENDENT UPON FUTURE ENACTMENTS BY CONGRESS OF PROVISIONS OF DOUBTFUL CONSTITUTIONALITY. THE PEOPLE OF PUERTO RICO NEED TO KNOW THE CONCRETE AND DEFINITE TERMS OF STATEHOOD IN ORDER TO MAKE AN INFORMED DECISION ON MATTERS ESSENTIAL TO THEIR WELL-BEING.

ONE PARTICULAR ELEMENT OF OUR DEFINITION OF ENHANCED COMMONWEALTH SHOULD BE CONSIDERED AT THE OUTSET: PERMANENT UNION. COMMONWEALTH SUPPORTERS CONCEIVE OF OUR RELATIONSHIP TO THE UNITED STATES AS ONE OF A PERMANENT NATURE. WE DO NOT SEE PUERTO RICO AS DESTINED TO BE A STATE OF THE UNION OR AN INDEPENDENT NATION. SUCH IS OUR POLITICAL WILL. FROM A LEGAL POINT OF VIEW, THIS UNION FINDS ITS PERMANENCE IN THE CONSTITUTIONALLY IRREVERSIBLE BOND OF OUR AMERICAN CITIZENSHIP AND IN THE COMPACT OF UNION BETWEEN THE PEOPLE OF PUERTO RICO AND CONGRESS, WHICH WAS NOT ENTERED UPON FOR A LIMITED TIME PERIOD, BUT RATHER FOR A RELATIONSHIP ENDURING INTO THE FUTURE ONLY TO BE CHANGED THROUGH MUTUAL CONSENT.

WE ARE FULLY AWARE, HOWEVER, THAT PUERTO RICANS HAVE A RIGHT TO ASPIRE TO ANOTHER POLITICAL STATUS; THIS IS

INHERENT IN THEIR RIGHTS AS FREE PEOPLE. COMMONWEALTH SUPPORTERS ARE SECOND TO NONE IN THE DEFENSE OF THESE RIGHTS OF ALL PUERTO RICANS. THE PERMANENCE ON WHICH WE BASE OUR RELATIONSHIP IS THE ONLY PERMANENCE POSSIBLE IN THE POLITICAL RELATIONSHIPS OF DEMOCRATIC PEOPLES: THAT THEIR CONSTITUTIONAL INSTITUTIONS ENDURE STABLY INTO THE FUTURE AND THAT WHEN THEY DECIDE TO CHANGE THEM THEY WILL FOLLOW THE ESTABLISHED CONSTITUTIONAL AND DEMOCRATIC PROCESSES TO BRING ABOUT ANY DESIRED CHANGE.

UNDER S.712, THE POLITICAL AUTONOMY OF THE PEOPLE OF PUERTO RICO WITHIN PERMANENT UNION WITH THE UNITED STATES WOULD BE FURTHERED IN SEVERAL WAYS. MANY FEDERAL LAWS ARE APPLICABLE IN PUERTO RICO TODAY IN SPITE OF THE FACT THAT THEY ARE NOT ATTUNED TO THE PARTICULAR ECONOMIC, CULTURAL, DEMOGRAPHIC, AND OTHER CONDITIONS OF THE COMMONWEALTH. UNDER OUR PROPOSAL, FEDERAL LAWS, RULES AND REGULATIONS WHICH ARE INCONSISTENT WITH THE DESCRIBED POLICY, NOW GENERALLY APPLIED TO PUERTO RICO BY INCLUDING US IN THE DEFINITION OF THE WORD "STATE," WOULD BE INAPPLICABLE TO PUERTO RICO, UNLESS CONGRESS MAKES A SPECIFIC FINDING THAT THERE IS AN OVERRIDING NATIONAL INTEREST IN THE APPLICABILITY OF SUCH LAW TO THE COMMONWEALTH OF PUERTO RICO. ANY FEDERAL LAW PERTAINING TO FOREIGN RELATIONS, DEFENSE, NATIONAL SECURITY, CITIZENSHIP AND GRANTS AND SERVICES TO INDIVIDUALS, HOWEVER, WOULD CONTINUE TO APPLY TO THE COMMONWEALTH JUST AS IN THE STATES.

THE POLITICAL AUTONOMY OF PUERTO RICO WOULD ALSO BE BOLSTERED BY GIVING IT ECONOMIC JURISDICTION OVER THE WATERS, SEABED AND SUBMERGED LANDS SURROUNDING PUERTO RICO; BY RESTORING ITS AUTHORITY TO ISSUE UNITED STATES PASSPORTS; BY STRENGTHENING ITS LAW ENFORCEMENT CAPABILITIES; BY ENABLING THE GOVERNMENT OF THE UNITED STATES, OR ANY AGENCY THEREOF, TO DELEGATE TO THE COMMONWEALTH THE TOTAL OR PARTIAL RESPONSIBILITY FOR FUNCTIONS NOW PERFORMED BY THE FEDERAL GOVERNMENT; AND BY PROMOTING THE INTERNATIONAL INTEREST OF PUERTO RICO TO THE EXTENT COMPATIBLE WITH THE FOREIGN RELATIONS AND SECURITY INTERESTS OF THE UNITED STATES.

THE ECONOMIC AND SOCIAL DEVELOPMENT OF THE PEOPLE OF PUERTO RICO WOULD BE ACCELERATED BY SECURING FOR THEM MORE EQUITABLE PARTICIPATION IN ALL FEDERAL PROGRAMS THAT PROVIDE GRANTS OR SERVICES TO CITIZENS OF THE UNITED STATES AS INDIVIDUALS; BY AUTHORIZING THE COMMONWEALTH TO CONSOLIDATE FEDERAL GRANT-IN-AID PROGRAMS; BY ENDOWING THE COMMONWEALTH WITH AUTHORITY TO IMPOSE TARIFF DUTIES ON FOREIGN-ORIGIN PRODUCTS IMPORTED INTO PUERTO RICO WHEN CONSISTENT WITH THE INTERNATIONAL OBLIGATIONS OF THE UNITED STATES; BY ENABLING THE COMMONWEALTH TO ESTABLISH REGULATION OVER MARITIME TRANSPORTATION TO ASSURE THE LOWEST POSSIBLE RATES; BY PROMOTING THE CREATION OF INTELLECTUAL PROPERTY IN PUERTO RICO; AND BY THE UNITED STATES ENCOURAGING OTHER COUNTRIES TO CONSIDER PUERTO RICO AS A DEVELOPING AREA FOR PURPOSES OF THEIR GENERAL OR REGIONAL SYSTEMS OF TRADE PREFERENCES.

INCREASED PARTICIPATION BY THE PEOPLE OF PUERTO RICO IN UNITED STATES GOVERNMENTAL DECISIONS AFFECTING THEM WOULD ALSO BE ASSURED, AND FINALLY, THE DISTINCT HISTORICAL HERITAGE

AND CULTURAL IDENTITY OF THE PEOPLE OF PUERTO RICO WOULD BE SAFEGUARDED THROUGH FEDERAL POLICY.

THESE ENHANCEMENTS OF COMMONWEALTH STATUS WOULD PROVIDE A BROADER FRAMEWORK OF AUTONOMY UNDER WHICH THE PEOPLE OF PUERTO RICO COULD ACCELERATE THEIR ECONOMIC AND SOCIAL DEVELOPMENT, AFFIRM THEIR CULTURAL IDENTITY, AND ASSUME A MORE PRO-ACTIVE ROLE IN THE CARIBBEAN REGION.

THEY WILL GO A LONG WAY TOWARDS UPDATING WHAT WAS A BRILLIANT SOLUTION TO THE DILEMMA OF A PEOPLE SEEKING THEIR PLACE IN DIGNITY WITHIN THE AMERICAN CONSTITUTIONAL SYSTEM -- A PEOPLE UNWILLING TO GIVE UP THEIR IDENTITY AND CULTURE, AND THE PURSUIT OF THEIR FULL ECONOMIC POTENTIAL THROUGH STATEHOOD OR TO GIVE UP THEIR CITIZENSHIP, ECONOMIC POTENTIAL AND PERMANENT UNION WITH THE UNITED STATES THROUGH INDEPENDENCE.

THESE ENHANCEMENTS WILL GO A LONG WAY IN ENABLING US AS A PEOPLE AND AS AMERICAN CITIZENS TO BUILD A FUTURE TOGETHER WITH THE UNITED STATES WHERE WE CAN BE TRUE PARTNERS CONTRIBUTING IN AN INCREASING WAY NOT ONLY TO OUR PROGRESS AND WELL-BEING, BUT ALSO TO THE BROADER GOALS OF THE UNITED STATES, SUCH AS THE ECONOMIC DEVELOPMENT OF THE CARIBBEAN BASIN.

ALREADY WE ARE ENGAGED IN A TASK TOGETHER WITH THE U.S. GOVERNMENT WHEREBY WE HAVE PROMOTED TWIN PLANTS BETWEEN PUERTO RICO AND ELEVEN CARIBBEAN COUNTRIES. THIS EFFORT REPRESENTS INVESTMENTS MOUNTING TO $165 MILLION OVER THE PAST 3 YEARS, CREATING 10,327 JOBS IN THESE ELEVEN COUNTRIES.

IN THIS, OUR CONTRIBUTION TO REGIONAL DEVELOPMENT AND NATIONAL SECURITY, WE BROUGHT TO GRENADA FOUR MANUFACTURING PLANTS TWINED WITH PUERTO RICO. WITH OUR SECTION 936 RESOURCES WE ARE FINANCING HOUSING DEVELOPMENTS IN JAMAICA AND AIRLINES SERVING THIS AND OTHER POINTS IN THE CARIBBEAN REGION. YOUNG MEN AND WOMEN FROM ALL OVER THE CARIBBEAN ARE BEING TRAINED IN PUERTO RICO. NOT ONLY ARE CARIBBEAN ECONOMIES BEING STRENGTHENED IN A REGION WHERE THE CUBAN MODEL VIES FOR LEADERSHIP BUT, MORE IMPORTANTLY, DEMOCRACY IS BEING STRENGTHENED.

A STRONGER COMMONWEALTH ECONOMY, ONE BETTER ABLE TO FUNCTION UNDER THE ECONOMIC DYNAMICS OF A NEW CENTURY, A POLITICALLY STRONGER COMMONWEALTH WILL OPEN THE WAY TO GREATER ACHIEVEMENTS IN PUERTO RICO AND THE REGION. AND IT WILL OPEN THE WAY FOR THE PEOPLE OF PUERTO RICO TO FEEL THE PRIDE THAT THROUGH THEIR EFFORTS AND THEIR DEVOTION TO THE VALUES SHARED WITH THE UNITED STATES THEY ARE HELPING TO BUILD A BETTER FUTURE FOR THEMSELVES AND THEIR FELLOW CITIZENS OF THE UNITED STATES OF AMERICA.

The Chairman. Thank you very much, Governor, for an excellent statement. At this time, were there further statements from your group? At this time I would like to invite Governor Romero Barcelo and Senator Berrios Martinez to come to the table and have questions among the three principles for, perhaps, the next 50 minutes or an hour.

And then this afternoon we will get into the further questioning of first, you, Governor and then tomorrow our other two main witnesses.

First gentleman, I want to really extend my authentic congratulations to all three of you. All three of those statements were really excellent and portrayed—I think the best case that could be made in the case of each of you—of three different statuses. I say that not out of courtesy, but out of real conviction.

First I want to tell you that yesterday afternoon the Appropriations Committee cleared my amendment to give $1.5 million, that is $500,000 to each of the parties to cover your expenses, personnel, rent, travel, et cetera, connected with this plebiscite, with a referenda, should I say. As we speak it is being considered on the floor of the Senate. The committee amendments were accepted en bloc with the exception of two other amendments. So this amendment has been accepted, at least temporarily, on the floor. So we are very hopeful that it will be accepted without a debate on the floor of the Senate and later in a conference committee with the House.

But I would first like to invite the three of you tell us why it is important because we may have to argue this either on the floor of the Senate or in a conference committee. I suppose we ought to begin with you Governor Romero Barcelo—and would you begin.

Governor Romero. I believe it is extremely important, Senator because right now we have no funds whatsoever available other than the usual funds that the party gets through donations from the people. We just went through a campaign in 1988 and we have some debts from that campaign that we have to fulfill. At the same time, raise additional funds that are required.

At this point in time we have engaged attorneys in Washington, constitutional attorney; we have engaged economists to advise us on this intricate problem. We have been using volunteer services up to now. And at this moment the Governor of Puerto Rico and the commonwealth is using the people's money to do their job. They travel, they eat, they get lodged in hotels, they do all—pay all the attorneys, and all their help, through the funds of Puerto Rico. So they are very, very comfortable.

But the Independence Party and the Statehood Party do not have the funds. We are going to deal with that locally because we feel that use of that money is illegal. But we will do that locally. But here, we need those funds to have a fair chance. We have had very great difficulties in getting all of our information available at the times that the Senate required and we want to meet those schedules and we want to have this whole process speeded up as much as possible.

The Chairman. Thank you very much. To his credit, although Governor Hernandez Colon does indeed have state funds and travel, he is supporting this amendment. Would you like to comment on that?

Governor HERNANDEZ-COLON. I am fully supporting the amendment. I am very much aware of the need of the funds, particularly because of the technical, legal and economic work that has to be done regarding these bills. I would also like to say that on the first of May, the legislative assembly of Puerto Rico approved the joint resolution number three which provided $1,350,000 to be equally distributed between the parties so that they may use them for these purposes or other reorganizational purposes in Puerto Rico: reorganization of the parties.

So there have been the fund, public funds available to all three parties since the first of May in Puerto Rico. We fully support the amendment. We understand that it is absolutely necessary to have additional funds.

The CHAIRMAN. Thank you very much, Governor. Senator Berrios.

Senator BERRIOS. I think it is very easy to argue in favor of the amendment in order for there to exist fair and equitable conditions for all concerned. It is just as though they have equal access to funds. And obviously that is not the case at the present moment. And the only way to compensate for that deficiency is through this amendment.

The CHAIRMAN. Thank you very much. Gentleman, first with respect to the process, you have all been involved every step of the way in evolving this process and putting in the three bills and working with us on the way this bill is handled here in the Congress. Do you have any particular suggestions on how we might improve just the process, the hearings, the method of handling this bill? Is there anything further you would like to suggest? Any of you?

Governor ROMERO. In the hearings that are going to be held in Puerto Rico very soon this month, I do not know what amount of time would be allotted to each one of the witnesses, but I am sure that there will be quite a few witnesses that will have significant contributions to make. But unless they have some amount of time, reasonable, and I would call reasonable at least 15 minutes, that it would be very difficult for them to come up with any kind of a statement, a significant statement in three or four or five minutes.

I think it is something that we have quite a few people at home that want to make significant contributions. And it is not the same you know just putting them into the record, or reading it out loud or putting it forth verbally because we all know that when this record is going to get big, very, very big records.

The CHAIRMAN. Well there is always a tradeoff. We have only so much time in Puerto Rico and we can restrict the number of people and allow more time per person or let more people testify and have a shorter period of time. Senator Berrios.

Senator BERRIOS. I think that a way should be found for the hearings to be extended in Puerto Rico, geographically and in time. I know that there are difficulties, but I would say that with time enough to keep the timetable as it is, the extension should be made. How can this be done? I imagine there must be ways of sending the staff over, for example, to listen to—more people might have to stay in different places in Puerto Rico, on the West Coast and the South at the same time you keep on conducting your hearings here.

I think they should be extended. Besides having more time for those who attend, they should be extended geographically in Puerto Rico and I think they should be carried to New York particularly, also into Chicago for the Puerto Ricans there to express their feelings regarding this issue which effects their homelands. I think both things should be done.

The CHAIRMAN. Well, again, we have that problem of the tradeoff. As I said in my opening statement, we are committed. Let me speak for myself, I am committed to getting this legislation out of this committee early enough so that the process can work. And the goal is referenda for self-determination for Puerto Rico. It may not represent everything that everyone wants.

But if we are going to do that we have to push and we have to move and we cannot have too many hearings. There are so many serious questions here, constitutional questions, legal questions that involve lawyers and specialists and technicians. We have to allow time for that kind of thing because that is of first importance. Allowing ordinary citizens to testify is important in the process, too, because they must feel that they are a part of this. But we do not want to make them such a part of it that we do not have time to legislate. We have to keep our eye on the ball and the fact that we have to meet that goal.

So, as time goes on if the three of you can keep the excellent relationship you have had, tough competitors, but able to talk between yourselves on advising us we would very much appreciate it.

Governor ROMERO. Regarding the hearings, besides the issues of the bills themselves, there are certain procedural issues regarding the plebiscite in Puerto Rico that we would also like to be able to address in the hearings. That is how the plebiscite is going to be carried out. And something that we discussed earlier, which is, we would like the U.S. Department of Justice and the federal courts, to have jurisdiction, particularly pertaining to any tampering with the process.

We are having problems right now with the elections in San Juan. They are being questioned. And we certainly would not like to go to the elections with the same persons that are going to be controlling the elections unless we have some forum that we could feel that there would be more objectivity where we could present these issues and these problems.

That is why we would like to somehow or other expand or include the jurisdiction of the U.S. Department of Justice and the federal courts because the plebiscite is also something that involves the national interest.

The CHAIRMAN. Are you speaking of putting that in the legislation?

Governor ROMERO. Yes, sir.

The CHAIRMAN. There are a number of questions, of course, that must be resolved. First, the question of who will vote? Senator Berrios wants to restrict that. Governor Hernandez-Colon wants to broaden it and Governor Romero, your position is that you want to expand it slightly from what it is now, am I correct on that?

Governor **Romero**. Well, we can meet the constitutional and legal issues involved and the practical issues involved. I certainly feel that most of the Puerto Ricans living in the States would be voting for statehood because that is why they came up here. It costs them $200 to make the trip.

The **Chairman**. As I understand it, under present law, it is rather easy to establish a voting residence in Puerto Rico; you have to live there 60 days. Is that correct?

Governor **Romero**. Yes.

Senator **Berrios**. Senator, I beg your pardon. We would like to broaden the voting qualifications and so that only Puerto Ricans vote. We broaden the rights of Puerto Ricans in the same manner that we limit the rights of non-Puerto Ricans to vote. We are the ones who want to broaden the rights of Puerto Ricans.

The **Chairman**. On the question which some of you have suggested limiting the amount of money that may be spent independently by, for example, 936 corporations? We have requested a legal opinion on that and we have a copy of that. I will furnish copies to all of you. There are serious questions under the *Buckley* v. *Valeo* ruling about how much restriction can be done in that respect if we should want to do that, and I do not suggest that we would want to do that. I do not know that it would be possible to get the three of you to agree on that, but—Senator Berrios?

Senator **Berrios**. Regarding that I would like to say that *Buckley* v. *Valeo* is not under the territorial clause that this Congress should feel at ease to make all needful rules and regulations regarding the issues before us in this referendum because in our legal opinion, *Buckley* v. *Valeo* does not stand in this type of referendum. This referendum will be held under the powers of the territorial clause of the United States.

The **Chairman**. But there is a fundamental right question. And I think surely the freedom of speech. It has been held to be a fundamental right and under *Buckley* v. *Valeo* there is a first amendment right that they are protecting. So let me ask you a troublesome question for me. The legislation as we initially introduced it and as further expanded provides, in the case of S. 712, for a self-executing status, but it provides that that status may be achieved with only 50.1 percent of the vote, anything over 50 percent. Should we provide for more than 50 percent for a change in status? I am thinking of, for example, if you had a choice of let us say, independence by 50.01 percent and then perhaps if you could lock that in, that they could not consider another choice then, but that you would then have a further election with the requirement to have something above 50 percent in order fully to effectuate that status.

Is that fair? Keeping in mind, for example, that Hawaii and Alaska both had had referenda before they were admitted into the Union and had had that approved by 90 percent, as I recall. Is that fair?

Senator **Berrios**. If the question is directed to me, I will answer in a very simple manner. According to our interpretation of this process, the people of Puerto Rico have a right to independence, so as soon as they express that right, by a majority vote of any kind, but of course, 50.1, they should make that right valid. Now there is no right to statehood and there is no right to commonwealth or free association. So Congress is free to put whatever percentage requirements it deems necessary regarding commonwealth and regarding statehood because that is your prerogative.

It is not your prerogative to deny independence once the Puerto Rican people demand it because you are ruled by international law which is part of a law of this land and which gives the right to independence to peoples. That does not apply to statehood and that does not apply to commonwealth. I would understand that some people here in the United States and in this Congress would like to put higher percentages for statehood or for commonwealth. After all, how can you guarantee that a 50.1 percentage for statehood is not converted into a minus 50 percent in three years after statehood. Then you will have Lithuania on your hands here.

The **Chairman**. Governor Romero.

Governor **Romero**. Senator, I agree with part of what Senator Berrios has said, but not all of it of course. I believe that they have a right. People who advocate independence have a right to become independent if a majority in Puerto Rico vote for it. But I disagree with him when he says that we do not have a right to be a state.

I think we do have a right to be a state because all that being a state means, as far as we are concerned, is the right to vote and a right to representation, equality. And that is the basic issue. When all American citizens have a right to equality, have a right to vote and a right to representation. There is no Congress, no one, that can deny that right to U.S. citizens to achieve that equality. So we feel that once the majority of people of Puerto Rico vote for it, then that has to be the goal.

First, the commonwealth option, they certainly do not want to have it put in place if more than half of the people vote for it. As a matter of fact, as Senator McClure very precisely pointed out when this bill was introduced in the Senate, the things that the commonwealth asked for do not even require a referendum. This could be laws that can be passed by Congress because Congress has the territorial powers over Puerto Rico because we are a terrority so it does not have to go through a plebiscite. So, if a majority of the people of Puerto Rico vote for it, then how can Congress then say, well we would like you to do it but we are not going to give it to you now. So it is 51 percent for commonwealth, it has to be 51 percent for statehood. You cannot have different rules.

And there is another issue here. When you talk about statehood for Puerto Rico, when you introduce the ingredient of commonwealth of the territorial status, they say that they stand for permanent citizenship, U.S. citizenship; they say that they are proud of their U.S. citizenship, and they want to be permanently united. So the only difference is that—I really here—are represented, should we have the right to vote and the right to representation? And should we assume our obligations and bear obligations to pay taxes? So, we have to have more than a majority for that to have a right to vote and assume obligations of paying taxes. I think 51 percent is more than enough.

There is not going to be a Lithuania like Mr. Berrios says. If there was 51 for statehood and 49 percent for independence we might have to think about it. But there is not going to be 51 percent statehood and 49 percent independence. We are going to win by a majority but the second stronger will be for the commonwealth status. I think any political observer would say that.

So if the commonwealth status has permanent union and U.S. citizenship, I am sure the vast majority of the commonwealth will be very happy with statehood once it comes and once they realize what it means.

Governor HERNANDEZ-COLON. I would like to say, Mr. Chairman, that there is a significant difference between the consideration of the enhancements of the current status and a change to a totally different status. Commonwealth was established in 1952. We are not seeking to change the nature of that status. We are seeking to enhance it in the different ways that we have discussed here.

As Senator McClure himself said, these enhancements could come by the way of congressional legislation. But then, their nature would be different because they would not be proposals to the people of Puerto Rico to be accepted in a referendum. And, therefore, they would have a force and effect by the fact that they were legislated by the Congress, but not by the fact that they had the acceptance of the people of Puerto Rico. And, therefore, they were joined in contact so there is a basic difference here.

Now, historically, the vote for statehood as you very well know, has been a vote of very, very large majorities. It does entail a very fundamental and radical change. Independence also entails a very fundamental and radical change. So it is not a question of abstract rights that are being raised here. It is a very fundamental, political decision to be made between the people of Puerto Rico and the Congress of the United States.

And, therefore, there should be the necessary solidity to whatever decision of that nature is made.

The CHAIRMAN. Governor Hernandez-Colon you have made statements to the effect that Section 936 would not be possible to be extended under statehood. I wonder if you would make that statement and give Governor Romero a chance to respond to that because that is one of the key arguments you have made?

Governor HERNANDEZ-COLON. I have two things to say about that. First of all, that they do not address the problem in their proposal. S. 712 is supposed to be a self-executing bill. And although Section 936 is mentioned in S. 712, it is not mentioned in the way that it would need to be mentioned so that a precise amendment to the internal revenue code is made in order to make it operative under statehood situation. It just says Congress will do this at a later date. So that is the first problem that it is not precisely and concretely addressed in the technical, legal language necessary to do so.

Now, with regards to that particular legal language and assuming that we would have it before us, that credit structured for a state would come into conflict with the uniformity clause of the Constitution that requires that taxation should be uniform throughout the 50 states. So you would have here a credit within the internal revenue code applicable only to Puerto Rico. That is the constitutional question that would then be raised if they had proposed the technical amendments, which they have not.

The CHAIRMAN. Governor Romero.

Governor ROMERO. Senator, Hernandez-Colon is an attorney and so am I, but neither of us are constitutional experts. The commonwealth proponents have used the services, have used the opinions of Professor Laurence Tribe from Harvard. Now we are using the opinions and recommendations and advice of Professor Paul Gewirtz from Yale University. So Professor Gewirtz will be available tomorrow at the two hour session to explain precisely from a constitutional attorney's point of view, why it is constitutional to extend 936 at least for a period of time within statehood.

I want to point out further. Senator, these two books I have are two volumes which are the most comprehensive study that has ever been made about the admission of the original 13 colonies that became a nation and the 37 states that were then admitted in the Union. The whole process that went through in every single instance. This book was prepared by the Grupo de Investigatores de Puerto Rico, Puerto Rican investigation group and it is a very, very comprehensive and complete study.

In this book you will find that they were distributed to the staff members of the Senators and if anyone does not have it please let us know. I will be very glad to make it available. Each one of those, they studied case-by-case, state-by-state, all of the special agreements and all the special accommodations that were made for every territory. And the most recent ones were, of course, Alaska and Hawaii.

Alaska, for instance, as far as the excise tax on oil is concerned, they are exempt 90 percent and that is by law. And that was challenged and the Supreme Court said no. But those things, I think they can be explained much better by Professor Gewirtz. And I just wanted to add—and here you will see also in the study that not even a majority has been required for statehood. Throughout the history there were cases before the admissions act was put forth to the people, the vote on the referendums had been even less than a majority; for statehood, in Wisconsin it was 22 percent, in the case of Nebraska it was 47 percent. In the case of Colorado it was 45 percent. So they did not require a majority before the admissions act was presented to them.

I think tomorrow we will be in a much better position with our legal advisors to address that question. And Mr. Gewirtz has prepared a written statement very, very, very thorough and excellent one that addresses itself to all those issues that have been raised.

The CHAIRMAN. I think it would be helpful to have him here. I understand that the Finance Committee has jurisdiction over Section 936.

I would expect that we would at least make recommendations to the Finance Committee and at least deal with that question in some manner—in a preliminary manner at least, because that is so intrinsic to the whole Statehood situation and I am encouraging the Finance Committee to begin hearings early on, because it is so tremendously complicated and so technical and they will need time within which to deal with that, Senator?

Senator BERRIOS. Regarding this matter, I must point out the following. In this area, like in other areas which will be considered by this Committee, there is nothing Statehood and Commonwealths can do that Independents cannot do better.

There is no way in which you can make 936 permanent, or semipermanent, either under Commonwealth or under Statehood. It would be there for a number of years—*X* number of years, subject to the will of the Congress.

If you wanted 936 for 15, 20 or 30 years and the Puerto Rican people wanted 936 for so many years, then we could enter into a treaty and then 936 could be finally permanent. So there is a lot of flexibility from no permanence at all to halfway permanency, 50 year permanency in independence and I must remind you of this.

I must also point out for the record that it is true that some states have been admitted without a majority of voters, but these are not a people—these are American people who live in Wisconsin or Colorado. In Puerto Rico we are talking about the Puerto Rican people and that is a basic difference.

The CHAIRMAN. On that subject——

Senator MCCLURE. Mr. Chairman, might I just interject one thing with respect to the jurisdictional question?

The CHAIRMAN. Yes, indeed.

Senator MCCLURE. Obviously, if we continue the status quo under the laws of Commonwealth, the U.S. Tax Code will have an application in a manner that would be differently affected than it would be under either independence or Statehood.

Under the circumstances, we have a greater difficulty in deferring to the committee of jurisdiction here with respect to the future application of the tax code, which is uniquely their jurisdiction and not ours. I realize that you are not so concerned about the jurisdictional niceties between committees of the Congress, but we cannot evade it and I think we can treat that tax consequence perhaps differently in our legislation emanating from this Committee, with respect to the options that might be available under Independence or Statehood, but we are more constrained under the Commonwealth alternative

The CHAIRMAN. I think that is correct, but our concern now is to get the Finance Committee involved, not to steal their jurisdiction.

Governor HERNANDEZ-COLON. Senator, I would like to say that our bill does not include any amendments to the Internal Revenue Code.

The CHAIRMAN. Yes, we understand that. Senator Berrios, you said you were dealing with the people of Puerto Rico, implying that there is a difference between the people and American citizens.

If the Puerto Rican people opted for independence, would it not be appropriate then to have them make a choice as to citizenship—American citizenship or Puerto Rican citizenship?

Senator BERRIOS. I would have no objection to that, but the fact is that the United States Supreme Court has an objection to that, and our constitutional experts which work for free, as a matter of fact—maybe we will contract some later—our constitutional law experts say that fortunately or unfortunately that is out of our hands.

The CHAIRMAN. Well, we have a congressional research service. I will share that opinion with you. As I recall, it states that there is a difference considering the derivation of citizenship. If citizenship derives from having been born an American citizen it is indefeasible, whereas if it is from——

Senator BERRIOS. If it is legislative. It can be of a legislative nature or by birth. The thing is that we are talking of citizens by birth in 99.9 percent of the cases, because almost nobody was born before 1917 is now a Puerto Rican citizen. This is a question we can talk about. I have no objection to comparing constitutional notes and we have made our proposal because we believe it is in accord with U.S. Supreme Court decisions.

The CHAIRMAN. Obviously, whatever the court says, it is.

Senator BERRIOS. If it will be of any help, Senator Johnston, I can assure you that all of the Independentistas will renounce American citizenship the next day after independence, so if you can convince Statehood and Commonwealth to do the same thing there will be no trouble whatsoever.

The CHAIRMAN. It would seem to me that since citizenship involves at least potentially duties as well as responsibilities—here it is. I will share this with you.

Senator BERRIOS. I will be glad to consider it.

The CHAIRMAN. They talk about, some Puerto Ricans do have 14th Amendment citizenship—that is, those who were born in the United States—are within the meaning of Section 1 and are therefore constitutional citizens from birth.

As to them, either dual citizenship or some treaty provision requiring some choice might be alternatives. In any event, the relative number of persons involved would be small. I will share this opinion with you.

Now, Governor Hernandez-Colon, you have a process here in which you say that laws, rules and regulations, you would make a request that they be made applicable or not applicable after those laws, rules and regulations are passed. In which event, then, the Executive or the Congress would have to make a determination as to whether they applied.

Governor HERNANDEZ-COLON. There is a request in that direction. It is not exactly that. We request that a Federal policy be established that will alter the criteria presently existing for the applicability of Federal law, because it is very vague—it is the criteria of "locally inapplicable"—and because the practice that the Congress has followed is to include Puerto Rico in specific legislation by treating it as a state, we propose a more discriminating treatment for the extension of legislation to Puerto Rico.

This treatment would not apply to laws in the matter of foreign relations, defense, national security, citizenship or Federal programs extending rights to individuals. It would also not apply in any given circumstance where the Congress finds that there is an overriding national interest that a law of any nature not of the categories that I mentioned before should apply to Puerto Rico.

Now, given those exceptions, then the criteria would be whether the particular law is consistent with the Federal policy to be adopted as a result of the referendum and this policy would be as follows: the policy of the United States shall be to enhance the Commonwealth relationship enjoyed by the Commonwealth of Puerto Rico and the United States to enable the people of Puerto Rico, one, to accelerate their economic and social development and attain maximum cultural and political autonomy within permanent union.

The CHAIRMAN. Let me interrupt you at that point, because it seems to me that your proposal would be productive of endless litigation to determine whether it was consistent, or whether it had a proper regard for Federal law. For example, the Coastal Barrier Resources Act. Would that have a proper regard for ecology, or would it be considered——

Governor HERNANDEZ-COLON. I would say no.

The CHAIRMAN. I wonder if—for example, we might put in a proposal that said, in these categories—specific categories—that a rule of statutory interpretation would be that it did not apply unless Congress said that it did apply. The rule of statutory interpretation which of course could be overcome either by stating specifically in the law that it does apply, or by statutory history.

Governor HERNANDEZ-COLON. I would not like to answer to that. I think we have a problem that is recognized by our proposal in the bill and by your suggestion. I would like to give some thought to that and see what problems may arise.

The CHAIRMAN. Well, you will be here this afternoon and we might deal further with that question. It seems to me that you pose a legitimate question that we ought to try to deal with in this legislation, but it seems to me the formula would be a little difficult and productive of litigation.

Governor HERNANDEZ-COLON. There are many mechanisms that can be thought up and they have their problems, and we are certainly willing to look at alternatives.

The CHAIRMAN. Obviously, I have a lot more questions, but let me turn the questions over to Senator McClure at this point.

Senator MCCLURE. Well, Mr. Chairman, in view of the time, I would suggest that some of the questions that are more narrowly focused would be submitted to the witnesses for response in writing, giving them the opportunity to give a reasoned, reflected and consultative answer to the questions.

I have been following with interest the questions that you have asked, because they parallel many of my own. It is an extraordinarily difficult process which we are trying to follow and which we want the proposals of the three options to be as fully explained and understood as is possible for us to do in advance.

In connection with that general philosophy, I have a rather general question as to how the ballot is written in a plebiscite. In Puerto Rican law, the language of the ballots is to be developed by you. I would assume in this particular instance we probably have to develop that balanced language here. Do any of you have a problem with that conclusion?

Governor HERNANDEZ-COLON. That, as a matter of fact, senator, is in our proposal—in the Commonwealth proposal.

Senator MCCLURE. Do the other parties also agree with that?

Governor ROMERO. Yes, senator, we definitely agree that it should be determined at the level of Congress. We have not addressed ourselves to that issue, because it was not a part of what we were supposed to do, but I think in the process we should address ourselves to that issue and we would be glad to.

Senator BERRIOS. Of course, senator, responsibility is a function of power, and you have the power, so you make the offer.

Senator McClure. Well, we want it also to reflect the options as you gentlemen see them and so far as the Congress is willing to accept the proposals that are made, because I understand that we may have the power to do that, but on behalf of the people of the State of Idaho I sometimes resist the exercise of that power.

Senator Berrios. I resist it all the time. That is why I believe in independence.

Senator McClure. The second question with respect to the ballot language, obviously you cannot include on the ballot all of the proposal. There has to be some description of the alternatives so that the people of Puerto Rico can indeed read the ballot.

I suspect there will be some few who go to the ballot box without having read the entire proposal of any one of the parties, let alone all of the parties. I do not know whether that will lead them to check the fourth box that says, "none of the above," or what result that might have.

But I am concerned, as I think we all must be, that the people of Puerto Rico be given an honest choice and that it is a choice which we in the Congress of the United States are ready and committed to observe. I think it is fundamental to this proposition, so that we need to understand from our end, the Congress of the United States, what is being submitted as options, that we are ready to support when chosen.

Secondly, so that the people of Puerto Rico can know what the options are and they make an informed choice when they go to the ballot box. That leads us to the question of how simple or how complex the ballot language should be. We obviously cannot print all of this in its final form and put that on the ballot and say, now after you have read through all of this, check the appropriate box.

What is the answer to that? Is it a simple, do you choose Independence, do you choose Reformed Commonwealth or do you choose Statehood, or none of the above? Do you want it just that simple? Do you have an opinion, senator?

Senator Berrios. Yes, I have an opinion. I must remind you to start with that after so much progress we have 14 percent of the people who do not know how to read and write in Puerto Rico, so it will be a problem for them to start with 14 percent. We have to deal with that problem of people who cannot even read Statehood, Commonwealth or Independence.

The other issue which is of great importance is that in order for the choice to be informed, people have to be well informed before and that is done not through what appears on the ballot—because nobody is going to read it, whether it is medium or long—but through a campaign which permits and promotes the explanation of alternatives.

I think that is the real issue here—the type of political campaign leading up to the ballot—and then you can have as long a definition as you want, there in the ballot. But I think definitions are crucial to this matter and not only definitions as explained by the political parties. I quoted—I talked about that in my statement. Congress has the obligation to inform people as to the offer they are making regarding each one of the alternatives and the consequences in an official manner, through public notices or whatever way might be chosen. One has to devise very novel ways to deal with it, but I think it can be dealt with.

Senator McClure. Governor Hernandez?

Governor Hernandez-Colon. With regard to Commonwealth, the proposition that would be actually submitted to the people of Puerto Rico would not be Commonwealth itself, but rather the enhancement of Commonwealth, so we need to define in somewhat broad terms what this enhancement would be.

We have suggested the language here in our proposal, and it reads: enhance to enable the people of Puerto Rico to accelerate their economic and social development and attain maximum cultural and political autonomy within permanent union with the United States based on the irreversible bond of American citizenship, a common defense, a common market and a common currency. That would be the definition that we propose to the Congress, that be submitted to the people of Puerto Rico.

Senator McClure. Well, I see at least one gentleman shaking his head. I assume that is negative.

Senator Berrios. I do not mean negative regarding his definition. In my opinion it cannot be posed that way. That is such a vague generality and it would be such a vague generality regarding any other alternative that it is useless to pose it to people that way. It has to be more detailed.

Senator McClure. Governor Romero?

Governor Romero. Well, you talk about Senate Bill 712. Obviously, whatever was printed on the ballot would have to be broader and would have to be a more precise definition of what we are submitting to the vote of the people of Puerto Rico.

However, as you well point out it would be impossible—it would be unrealistic to set out the whole Admissions Act in the case of Statehood, or set out all the facts, the things that the Commonwealth people want for the so-called enhancement, that it would be very—in the first place people would not have time to read it at the ballot. We would have a kind of a revolution at the polls that people are waiting to vote.

So the only way to carry that message would be as Senator Berrios said—through the campaign before the plebiscite. So I think we can reach an agreement—I do not see why not—as to what the definitions, how large the definition or how broad the definition should be in each one of the different bills.

I have no problems with the Commonwealth defining itself—although I had some problems with their language, of course, expressly my problems with saying that there is any "permanent union" with Commonwealth because that would—It would be misleading the people of Puerto Rico. But if we argue about that, I think we can reach an agreement.

Senator McClure. If the senator would yield, I share his concern. What we would want to do, I think, is have a ballot which is neutral in terms of loaded adjectives. We do not want to say, "wonderful Statehood" or "great Commonwealth." We want to try to be as factual as we can and also succinct while conveying some information. I am sure the three of you can agree.

Governor Hernandez-Colon. But senator, I must mention that given the fact that there was a plebiscite in Puerto Rico in 1967 and that there were definitions at that time—there was a definition in particular of the Commonwealth formula and the elements in that definition, such as permanent union, common citizenship, were essential elements of the Commonwealth proposal that any change which would affect those essential elements would have a confusing and negative impact upon what the people of Puerto Rico were called upon to vote.

Because Commonwealth has been defined in a certain way, and so defining it in a different way would carry with it the connotation that Congress does not accept that particular definition and that would be the problem. Now, I do not suggest that we call it the "great Commonwealth" or anything like that, but that those historical elements that have been before the people of Puerto Rico should be a part of the definition.

Senator **BERRIOS**. Senator, I think we should make this point clear. I think the question is very important, and I think we can agree, but a reference has to be made to the self-executing treaty as a whole. Congress in S. 712 is going to make an offer. We want pressure so that the whole offer will be in the ballot box, but the people will have to know what it is about—I am referring to that offer that they are voting, and that offer is extended. How do you get the people to know the offer? That is a procedural matter which we can deal with, but I think that has to be——

Senator **MCCLURE**. I agree with the point that you make, senator. Governor Romero?

Governor **ROMERO**. We cannot take the precedent of 1967 as a precedent because there are certain things that happened in that plebiscite that are not present now which we objected to from the beginning. We went to the plebiscite because we had no choice, because there was going to be an offer of a vote and if we did not go we boycotted it as the Republican Party did then, then we would be out in left field and it would be a one-way contest, and they would say well here, the vast majority of the people of Puerto Rico is almost overwhelming for Commonwealth, so we had to go.

The Popular Party was in control of both legislatures, and the overwhelming majority of both legislatures, and they passed a bill where statehood was not defined, independence was not defined. They only had an embellished definition of Commonwealth. Then we have to go to the plebiscite. It was not accepted by the Statehood Party; it was not accepted by the Independence Party.

The Statehood Party boycotted the plebiscite; the Independence Party boycotted the plebiscite as an independent group, as a private group; we went with Luis Ferre to support statehood in the plebiscite. So that cannot be taken as a precedent. All the words that appeared in there and were voted for, that vote is not valid in its entirety because of the way it was admitted. Now, this case is different.

Congress is supporting it, all three parties are supporting it, all three parties are working together on the definitions, and I think that makes a world of difference from the 1967 plebiscite.

Governor **HERNANDEZ-COLON**. There is a misrepresentation here. Statehood was defined in the way that statehoodists wanted statehood to be defined in that plebiscite.

Senator McClure. Let me make one suggestion here, and then I think I will yield back the balance of my time so that we may address the questions in the individual sections to follow.

But, if we do not get into the question of the coloration on the face of ballot, an attempt by anyone to carry the salesmanship of their cause into the ballot box—into the voting booth—it may be that the only way we can avoid that is to leave the perception of the choice to the education process.

We must be as clear as we possibly can with respect to the Congress of the United States and our legislative history as to what we intend. Leave it to the debate in Puerto Rico as to how you presented that issue to the public. But, in the ballot itself, refer to the enabling act that calls for the plebiscite and say Commonwealth as set forth in the enabling act, statehood as set forth in the enabling act, independence as set forth in the enabling act.

So that everybody has the reference as to what Congress has approved and that the ballot itself contains no attempt to color that decision within the confines of the voting booth. I do not know how else to approach it, but I will certainly listen to the suggestions that may be made from time to time.

Governor Romero. The Virgin Islands really has a problem, they have about seven different alternatives. How they solve the seven definitions, I really do not know.

The Chairman. You may have just solved our problem Senator McClure. Senator Burns.

Senator Burns. Thank you , Mr. Chairman. I have one question for the Senator.

You mention that you had about a 14-percent illiteracy rate in Puerto Rico. From my own information, I am aware that an informed public is vital in any election, that when you go to the ballot, you fully understand the issues. And given the choice, people do the right things. They may not vote the way we want them to, but given the choice, they will always do the right thing for what their interests are.

But, I would be interested in knowing, do you know the percentage—this may be an unfair question—of truly bilingual people in Puerto Rico?

Senator Berrios. I do not know exactly, but let me advance some critera. I think one of the myths regarding Puerto Rico is that the Puerto Ricans living in Puerto Rico are bilingual. You know, it is a very easy test. When you go there, just go around a little bit and ask somebody in English something. Even in San Juan.

Truly, I studied at Yale and Oxford and see what kind of a patriotic accent I have. You know, and I was four years at Georgetown, four at Yale and two at Oxford, and I am still not bilingual. And it is not because of any psychological reasons, but because we have been brought up to speak Spanish in all our daily life and so on. So, bilingualism, I don't think, is a reality in Puerto Rico.

Many people speak English, yes, and they can communicate. But, we are not bilingual, I do not think so.

Governor Hernandez-Colon. I have the figures of the 1980 census on this, and we have 19 percent of the people of Puerto Rico, according to the census, that speak English fluently, 19 percent.

We have 23 percent that speak English with difficulty.

The CHAIRMAN. That is in addition to the 19 percent?

Governor HERNANDEZ-COLON. Yes—19 percent fluently and 23 with difficulty. And 58 percent are unable to speak English.

Governor ROMERO. Senator, may I address that question?

In the first place, one of the reasons why I consider myself bilingual, I have some trace of an accent once in awhile. But, I consider myself bilingual and I did not study much more than Ruben did in the mainland. I just learned Spanish as my first language and that is the language I spoke at home.

So, many people at home are, I think, bilingual and I think Berrios may have a psychological problem with trying to say that he is bilingual. He is very articulate in English, too.

Senator BERRIOS. Senator, if you permit me——

Senator BURNS. There would be those in these chambers who say that I do not handle the English language very well either. I guess my concern would be the ability to communicate.

Governor ROMERO. That is what I want to address myself to. The figures that the Governor have given are correct and I have no question about them. But, there has been something that has been happening in Puerto Rico, particularly under the supporters of Commonwealth administration.

Before 1940, Senator, we had in Puerto Rico about 500 exchange teachers who came from the mainland. Just about everyone that graduated from high school in the 30s and 20s had a teacher, who was Mrs. Brown, Mrs. Smith, something or other.

When the Popular Party came into office and control, they did away with that program. By the time Luis Ferre, the first statehood governor, came into office in 1969, there were less than a dozen or two dozen of the those teachers left in Puerto Rico. And they did away, to the point when I came into office in 1977, the English department in the public schools, as well as the mathematics department, as well as the science department, and they still are in very serious trouble.

Many of the teachers that were teaching English were not adequately prepared to teach English, did not have enough education to teach English. They had certificates to teach English. So the teaching of English in Puerto Rico has deteriorated tremendously under the Commonwealth, under the Popular Party, because they have been always ambivalent about being U.S. citizens.

They want to be U.S. citizens when they are asking for money. They want to be included, as you will see in the proposal. They want to be included as a state when it means receiving money. But when it means assuming obligations of citizenship, they want to be excluded from everything. From paying taxes, they want to be excluded from particpating in the process of governing and helping making the decisions.

So, right now, for instance, in the public schools of Puerto Rico, under this administration, they have a book for first graders written by Ricardo Alegria which is the Cultural Advisor of the Governor, where it talks about Puerto Rico. And when it refers to the nation, it says our friendly nation, the U.S.

It talks about Puerto Rico as my country and it makes no reference whatsoever to the fact that Puerto Ricans are U.S. citizens.

Nowhere in that book. And that is used for the students in the first few grades.

So, this is why when we say in Puerto Rico that the Commonwealth people are moving toward independence, and they deny it, it is the leadership that are going toward that goal. They have had the Secretary of Education under his administration make a proposal, which he later backs down from, because of the public indignation, to do away with the teaching of English in the first two grades.

There are legislators in his party who have submitted bills precisely for making Spanish the only official language in Puerto Rico. So, what they would like to do is eliminate English and create a greater difference between Puerto Rico and the rest of the nation.

And that is why we have so few people now that are bilingual and that can understand English. We feel that Puerto Rico can be, and should be, bilingual for our benefit, for the benefit of all of the people in Puerto Rico and the benefit of the nation.

I had the advantage to be bilingual. I have been able to enjoy Shakespeare in English, Cervantes in Spanish. I have been able to enjoy Bob Hope's jokes in English and Cantinflas' jokes in Spanish. I have had the best of two worlds. And, I think that is what we want to have in Puerto Rico.

Governor HERNANDEZ-COLON. Senator, could I make a remark about this?

Senator BURNS. It seemed at the time that it was sort of a simple question.

Governor HERNANDEZ-COLON. It goes to a very fundamental matter, what Governor Romero is saying. And that is, what should be the primary language of the people of Puerto Rico. Now, the United States, at the beginning of the century, established a policy of instruction in the public schools in the English language in order to bring about that result that Governor Romero is talking about.

Now, that policy is reflected in the enabling acts of, say, Louisiana, where the Congress in admitting Louisiana into the Union as a state, required that English be the language of instruction.

And, so it is reflected also in the enabling act of New Mexico. Now, I think there should be a concrete position from the statehooders here as to what they intend the language of instruction, the primary language of instruction, to be in Puerto Rican schools after Puerto Rico is admitted as a state.

Because, if that policy is not established, there is no possibility that that will ever happen.

Senator BURNS. My only concern is with all the points that the Chairman and the ranking member of this committee are concerned with, the ability to communicate. And I wanted some kind of a figure on that, and I can appreciate the difficulty in answering my question.

I have no further questions. Thank you, Mr. Chairman.

Senator BERRIOS. I think the questions and answers of both my colleagues here reflect what I have been trying to say all afternoon.

This is a very, very different problem from all those other problems that the United States has had to deal with. We are dealing with a people, and this is a reflection of it And your question is well oriented also, if I may say so, regarding how you instruct the Puerto Rican people. After all, the 58 percent cannot even speak English, much less write it.

Then when the orientation takes place, like Senator McClure proposed, translations will have to be made. TV orientation will have to made, not only on the part of the Puerto Rican political parties. You know how political parties usually behave; we all behave in a certain manner. Vote for me because you will have the job in the mayor's office in the next election.

We do not act that way because we do not have any mayors, you know? But maybe if we did, we could. I am not saying that I am an innocent bystander. But, definitely, that has to be taken out of the hands of the typical political bosses in Puerto Rico. They can talk and they can use whatever legitimate influences they want, but the Congress of the United States has to explain to the Puerto Rican people what title such and such says in Spanish and through mechanisms that they understand. It is an obligation on the part of the Congress.

I think Senator McClure was saying the same thing.

Senator BURNS. Thanks very much. I appreciate it. Thank you, Mr. Chairman.

The CHAIRMAN. Gentlemen, as you know, what we have planned is to have each of you appear separately. Governor Hernandez-Colon this afternoon, beginning at 2. Senator Berrios tomorrow beginning at 9:30, and Governor Romero tomorrow afternoon at 1:30.

There has been a suggestion that perhaps you would prefer, and perhaps senators here would prefer, to have a continuation of all three of you so that any question asked, the others could respond. Would you like to do that?

I do not want to change the schedule.

Governor ROMERO. Mr. Chairman, I think it would be much more instructive for the Senate if we were to do it separately so that we could have with us, at that time, the people that are working with us and who can address themselves more directly, and in a more technical manner, to many of the questions.

Like when I talked about the constitutional issues, we have Professor Gewirtz. I will address myself to what Governor Hernandez-Colon referred to.

I think our position is stated very clearly in our proposal in the bill. But, we will state it more clearly if it is necessary.

Senator BERRIOS. I have a suggestion regarding this. Why do we not go with a compromise. Why not keep on for two hours more, the three of us together, and then shorten the period we have for each other.

I think this is a lot more illuminating. It can be illuminating for this committee if the three of us can face some questions together for a larger amount of time, and then we can go into what Governor Romero says.

The CHAIRMAN. I do not like to change the schedule except by unanimous consent. If the three of you would like to do that, we can do that in this afternoon's session. You may not be able to be here tomorrow, Governor Hernandez-Colon.

Governor **Hernandez-Colon**. I have a slight problem. You see, we came prepared to make the presentations in a certain way.

The **Chairman**. Well, alright, let's keep the original schedule. I just think we've been having a good session this morning. I think it was productive. I think it will be equally productive to do it in the original way for this afternoon and tomorrow.

So, we will stand in recess until 2 p.m. at which time Governor Hernandez-Colon will testify.

[Whereupon, at 12:47 p.m., the committee recessed to reconvene at 2 p.m.]

AFTERNOON SESSION

The **Chairman**. The hearing will come to order. We are continuing this afternoon with the testimony of Governor Raphael Hernandez-Colon. Welcome back Governor. Do you have a statement for this afternoon?

STATEMENT OF HON. RAFAEL HERNANDEZ-COLON, GOVERNOR OF THE COMMONWEALTH OF PUERTO RICO

Governor **Hernandez-Colon**. Yes, I do, Mr. Chairman.

Good afternoon Mr. Chairman and members of the Committee. The structure of the Commonwealth proposal in the bills before you can best be understood by a deeper look at the nature and thrust of the Commonwealth relationship.

In the early part of this century, when the United States was shaping its policy regarding the status of Puerto Rico, Felix Frankfurter wrote that:

> One of the great demands upon inventive statesmanship is to help evolve new kinds of relationships so as to combine the advantages of local self-government with those of a confederated union. Luckily, our Constituion has left this field of invention open.

The creation of the Commonwealth relationship was, indeed, such an act of inventive statesmanship. The singular character of the relationship has been repeatedly stressed by the courts.

The Supreme Court of the United States remarked, in 1976:

> Puerto Rico occupies a relationship to the United States that has no parallel in our history. It is not a state, yet its degree of autonomy is not less than that of a state.
>
> In several cases, the United States Supreme Court has held that Puerto Rico is, to the same degree as a state, sovereign over matters not ruled by the Constitution. It is not a territory either, as this statehood proposal would have this Committee hold.
>
> The Court of Appeals for the First Circuit has ruled that Puerto Rico's status changed from that of a mere territory to the unique status of Commonwealth.

This was precisely the change intended by the Congress in 1952 in order to end the colonial relationship, and precisely the change recognized by the United Nations in 1953 declaring that the colonial relationship had ended.

The Commonwealth relationship represents, in sum, a new creative way of joining a community with a distinct historical heritage and cultural identity, a people in their own right, to the United States of America.

The realization of this fact has far-reaching consequences. In judging the advisability of changes to the Commonwealth relationship, the familiar analogies must be case aside. The yardstick is not whether a given power is or is not enjoyed by a state. The test is whether the proposed reform is in line with the reason and purpose of the unparalleled Commonwealth relationship.

The last four decades have seen the establishment and consolidation of Commonwealth. The coming decades should mark the age of its enhancement. Principles inherent in our relationship can and should now be developed to their full potential.

The referendum proposition for the enhancement of Commonwealth will appear in the ballot in Spanish as follows:

> El estado libre asociado se fortalecera para acelerar el desarrollo economico y social y alcanzar la maxima autonomia cultural y politica del pueblo de Puerto Rico en su union permanente con los Estados Unidos sobre los pilares de comun defensa, comun mercado, comun moneda, y el vinculo indisoluble de la ciudadania americana.

In English it would read as follows:

> The Commonwealth association with the United States shall be enhanced to enable the people of Puerto Rico to accelerate their economic and social development and attain maximum cultural and political autonomy within permanent union with the United States based on the irreversible bond of American citizenship, a common defense, a common market, and a common currency.

Our proposal, detailed and specific, is in stark contrast to those of Statehood and Independence. Neither contains a valid proposition. It should be required of them. Throughout this process, the people of Puerto Rico should know the precise contours of the status options presented to them. Ambiguity, fill in the blanks, saying one thing in Washington and another in San Juan, should be avoided.

The people of Puerto Rico are entitled to an informed choice. Voting in the dark is far scarier than whistling in the dark. A majority vote for Commonwealth should establish a policy to enhance the Commonwealth relationship by encouraging the acceleration of Puerto Rico's economic and social development; helping the attainment of maximum political autonomy within permanent union with the United States; securing more equitable participation in federal entitlement program for individuals; assuring increased participation in U.S. Government decisions affecting Puerto Rico, safeguarding the distinct cultural identity of the people of Puerto Rico and protecting the bilateral, non-colonial nature of our relationship.

This policy would govern the next phase of the Commonwealth relationship. The elements of this policy have been present since its creation. Their formal adoption and continued implementation as federal policy will assure that a relationship which, at the time it was established, was without parallel in American history, will long flower and bear fruit.

A prime test for this policy is the applicability in Puerto Rico of federal statutory law. Since 1900, the rule for applicability has been the following:

> The statutory laws of the United States, not locally inapplicable, have the same force and effect in Puerto Rico as in the United States, except the internal revenue laws.

This old provision raises vexing problems. No mechanism was ever created to determine which federal laws are applicable and which are not. The historical result has been the often indiscriminate extension of federal laws to Puerto Rico, even when differing conditions have called for a discreet differentiated approach.

Given the fact that the Commonwealth relationship does not envisage a voting representation in Congress, but rather a broader local autonomy, the 1900 general standard of inapplicability must be fleshed out in order to achieve greater coherence with the principle of government through the consent of the governed.

Generic consent to all federal laws should give way to specific consent so that federal laws may better accommodate our different social and economic reality.

The uniqueness of our relationship requires that a device be fashioned for Puerto Rico to have a meaningful say in the applicability of federal laws. Other societies have met this problem. The British solution was the Statute of Westminster of 1933.

Laws enacted by the British Parliament did not apply in a dominion without its consent. Guam has requested an analogous solution. Our proposed solution is different.

Consent is granted to the applicability of federal laws relating to foreign relations, defense, national security, citizenship, and to entitlement programs which are rights inherent to U.S. citizenship. Other federal laws are applicable only if consistent with the policy, unless Congress finds that an overriding national interest requires their application in Puerto Rico.

As under current law, local inapplicability is subject to judicial determination. Our proposal also includes a mechanism for a case-by-case participation by the Commonwealth in the determination of local inapplicability. Rules and regulations receive analogous treatment, and federal agencies would be required, separately, to consider the consistency with the policy of any proposed action.

As we enter a new century and face the challenges of an ever more interdependent world economy, Puerto Rico cannot exist as an island by itself. Disconnected in geography or separate in its future and fate from the rest of the Caribbean and the world. We are playing a vital role in promoting the economic development and political stability of the Caribbean Basin, and we want to do more.

Puerto Rico's international role has been recognized by the United States. To further our contribution to national security and regional development, Puerto Rico requires a clearer federal policy in support of our international role. Our proposal builds on existing practice and it would enable the Commonwealth to take official actions to promote its international interests, provided the President does not determine they imperil the foreign relations or national defense of the United States.

This provision will introduce a much needed certainty and agility in decision-making to Puerto Rico's international actions, and will further our common interest in widening opportunity in the Caribbean. International commerce and trade are increasingly important as the world economy becomes more globalized.

Our proposed enhancement of Commonwealth would assure Puerto Rico the tools to prosper in the new economic dynamics. Puerto Rico is highly dependent on maritime and air transportation. In recent years, we have established San Juan as the aviation hub of the Caribbean, the gateway between Latin American and North America and Europe.

Our aviation proposal would designate Puerto Rico as an open port for foreign air carriers. Presently, foreign carriers interested in serving Puerto Rico are often unable to obtain operating authority. Under our proposal, while remaining within the deregulated U.S. domestic regime and subject to FAA jurisdiction for safety matters, the Commonwealth would negotiate with foreign governments bilateral air transport agreements, insofar as they affect Puerto Rico. This would be subject to presidential review for foreign policy concerns.

Puerto Rico is uniquely dependent on maritime transportation. Eighty-six percent of our imports come by ocean-going vessels. Over 66 percent of those come from the United States.

This ocean-going commerce has been subject to competing regulartory regimes generally unresponsive to Puerto Rico's need for the lowest possible maritime transportation rate. Annual rate increases of over 10 percent, well in excess of inflation, have not been uncommon.

We do not propose to eliminate the Jones Act provision requiring the use of U.S. bottoms in transporting outgoing and incoming cargo and passengers between Puerto Rico and the United States. It burdens us, but we recognize the overriding national interest.

We do propose, however, that the Commonwealth establish its own commission chartered to regulate the services and rates for the Puerto Rico-United States trade in ways that, given the Jones Act, assure the lowest maritime rates. We further seek to accelerate Puerto Rico's participation in the world economy by expanding access for our products in foreign markets and promoting our agricultural self-sufficiency.

Under the generalized system of preferences, and other regional systems of preferences, industrialized nations provide unilateral preferential treatment to imports from developing countries, territories, and other political entities. Although Puerto Rico's income qualifies it for GSP treatment, our exports do not now receive such preferential treatment enjoyed by, among others, the U.S. Virgin Islands, Guam, and American Samoa.

Our proposal would encourage other countries to consider Puerto Rico as a developing area for purposes of their respective GSP programs, and to assure U.S. cooperation toward that end.

Since 1930, Puerto Rico has set tariffs with respect foreign coffee to protect local production. Our trade proposal expands this existing authority to allow the imposition of tariff duties on foreign origin products imported to Puerto Rico, or transshipped through the United States, but only to the extent consistent with the international obligations of the United States.

Such tariffs would be in addition to those applicable upon entry to the customs territory of the United States. This special tariff-setting authority would permit the Commonwealth to provide adequate protection and encouragement to the production of a narrow category of Puerto Rican products, primarily agricultural in nature, of slight interest to the United States but vital to Puerto Rico. It would not affect U.S. origin merchandise, which would continue to enjoy duty-free access to Puerto Rico.

Looking forward to the next century, and the emerging information age, we seek to establish Puerto Rico as a regional center for the creation of intellectual property in industrial designs and computer chips. We have come a long way in our economic development, but as long as we are way behind the U.S. national per capita income, only one third, we must continue to seek mechanisms for economic growth, particularly in those technologies suited to a small, densely populated island.

Our proposal would amend U.S. copyright laws to provide for additional protection to industrial designs and semi-conductor chip products and mask works created in or first manufactured in Puerto Rico.

To a tropical island economy, maritime resources are critical. Our proposal would grant the Commonwealth jurisdiction over fishery and other maritime resources, living and non-living, and would permit Puerto Rico to establish its own exclusive economic zone.

Puerto Rico's economic development would be advanced. The federal funds would better reflect our priorities and needs and particularized economic and social circumstances. We propose to improse the utilization of federal funds by extending to Puerto Rico an authority analogous to that now available to the Territories to consolidate federal grant-in-aid programs on an agency-by-agency basis. This proposal would not cover entitlement programs that provide grants or services to individuals.

As we strive for accelerated economic development, we must keep in mind the need of U.S. citizens in Puerto Rico, for more equitable participation in federal programs providing them with grants or services. We propose to achive parity with the United States over the next four years in the nutritional assistance program, the equivalent of food stamps; AFDC; and Medicaid; and, over eight years, in the supplemental security income program.

We believe that U.S. citizens in Puerto Rico, like their counterparts in the states, are entitled to a minimal safety net without requiring them to leave Puerto Rico to gain full assistance. An existing inequity under present law is that more than 121,000 aged or disabled Puerto Rican residents not now eligible for assistance under SSI received a total monthly assistance of thirty-two dollars, compared with three hundred and fourteen dollars in the States.

Inequities of this nature among fellow citizens are contrary to the essence and dignity of our common citizenship.

As stated earlier, another primary objective of the federal policy to be established, is to accord the people of Puerto Rico greater participation in federal decisions affecting them. There are several ways to achieve this objective under Commonwealth.

We propose increased participation through a role in federal appointments on the island, and a non-voting delegate to the Senate. Currently, federal appointments serving in Puerto Rico are made with little, if any, consultation with the Government of Puerto Rico.

In order to make the exercise of executive power more consistent with the principle of government by consent, we propose that the appointment of any high-ranking federal officer serving in the Commonwealth, as well as any other appointments subject to

Senate confirmation, be made from a list of eligible candidates recommended by the Governor, who is the highest elected official in the Commonwealth.

Puerto Rico has been represented in the House of Representatives by a Resident Commissioner since 1900. His representation of the interests of the more than three million United States citizens of Puerto Rico contributes to the decision-making process of the House with respect to Puerto Rico.

We seek similar representation in the Senate. The multiplicity of legislative problems affecting Puerto Rico, and the Senate's exclusive role in treaty-making and Presidential appointments, make this representation vital to us. Our non-voting representative in the Senate would have all the rights and privileges of other members as are compatible with the Constitution of the United States.

The exercise of federal judicial authority must also be made more coherent with the nature of the Commonwealth relationship. As the Supreme Court has recently stated, "A rigid rule of deference to interpretations of Puerto Rico law by Puerto Rico courts is particularly appropriate given the unique cultural and legal history of Puerto Rico."

In line with this ruling, we set forth an abstention rule to govern the federal court's interpretation of unconstrued Puerto Rican statutes and regulations. To assure uniformity in the interpretation of the essential elements of the relationship, and in the interaction of federal judiciary with the Commonwealth government, we propose to centralize consideration of these matters in a single court.

To further the accessibility of federal courts to citizens seeking to vindicate their rights, almost 60 percent of whom speak no English, we propose that the proceedings be conducted in Spanish in the Federal District Court of Puerto Rico, at the request of any party. In such cases, to facilitate appeals and avoid delays, the court record would be kept in both English and Spanish.

To strenghten law enforcement, we would vest Commonwealth officials with authority to implement the immigration laws. Due to its relatively higher standard of living and greater employment opportunities, the Commonwealth has attracted many illegal aliens from nearby island nations. The admittedly limited resources of the INS on the island have made it impossible, effectively, to enforce the immigration laws.

Addition of Commonwealth resources to the patrol of our borders would both stop aliens who attempt to enter illegally and combat illegal traffic in drugs.

Central to the policy to be established through the referendum is the protection of the distinct identity of the people of Puerto Rico. Under our proposal, public lands and properties significant to our people and history, would be returned to the Commonwealth. Title to real property acquired by the United States from Spain under the Treaty of Paris, the so-called Crown lands, and to the lands administered under the Caribbean National Forest, El Yunque would be conveyed to Puerto Rico.

The United States and the Commonwealth would negotiate conditions for the administration of such lands and properties. No military bases would be affected by this proposal.

Finally, we include a number of other important proposals. The exclusion of Puerto Rico from the Coastal Barriers Resources System, the delegation of the administration of federal labor laws, the authority to issue passports and special entry visas, and the necessary authorization for the adoption of voluntary programming codes by broadcasters.

Such is our proposal. Detailed and specific to provide for a more effective governance for the people of Puerto Rico to assure economic progress, political stability, and cultural identity.

We must take exception, however, with the statehood proposal. Not to argue before you the merits of statehood as against Commonwealth, that we should do against Puerto Rican people in the referendum. But, rather, to point out the lack of specificity of the proposal in very crucial matters which need to be addressed by the Congress in order to provide the people of Puerto Rico with concrete terms upon which to make their decision.

Statehooders fail fully to define the bizarre sort of status option they propose. In order to continue their age-old practice of saying one thing in Washington and another in San Juan, Statehooders advisedly keep their proposal vague and imprecise.

In impeccable doublespeak, they contend in San Juan that the fifty-first state could march under its own flag, separate from the U.S., in the Olympics. In Washington, they fail to propose the needed amendment to the Amateur Sports Act.

In San Juan, as part of the incessant talk of a puzzling Jibaro state, they claim the primacy of the Spanish language in the fifty-first state. In their proposal to you, they only address the official languages of the governmental bureauacy, but fail to spell out what the language of instruction in Puerto Rican schools should be, which is the crucial factor if English is ever to become a primary language in Puerto Rico.

And it is not whether you get better English teachers or not. It is a question of what language do you teach math in? What language do you teach science in? What language do you teach history in? Because a very fundamental decision must be made by this Congress.

And that is whether a state where 60 percent of its population does not speak English at all will use its educational system to bring that about, or whether it will not use the educational system for that purpose. That is a crucial decision to be made by this Congress.

In San Juan, the Statehooders fully assert that the Federal Government shall fully assume Puerto Rico's $11 billion external debt. In their proposal to you, they dance around the issue and leave blanks at the key junctures.

In San Juan, they assert that Section 936 of the Internal Revenue Code, upon which one-third of the jobs in our labor force depend, will be preserved for twenty-five years after Puerto Rico becomes a state.

In the proposal before you, they present no self-executing amendment to bring this credit into effect under Statehood, which is constitutionally impossible given the clause requiring uniformity of taxation throughout the states of the Union.

When the people of Puerto Rico make their choice, they have a right to know whether Section 936 can remain for twenty-five years or not. Such a vital matter cannot be left for subsequent consideration at an unspecified time, as does their present bill.

A special Puerto Rican tariff protects our coffee growers under Commonwealth. Without it, the coffee production on the island would be wiped out. Such a tariff raises serious Constitutional problems under statehood.

The statehood proposal provides for this issue to be addressed after the referendum in an omnibus bill. Such a matter, again, cannot be left to subsequent consideration, but must be decided by the Congress at this time.

The reality is that statehood, without addressing and satisfactorily resolving these issues, would result in chaos and decline. Our developing economy cannot survive the additional heavy burden of federal taxation required under the Constitution's Equal Footing Doctrine and Tax Uniformity Clause.

Independent studies have shown that statehood would result in the destruction of thousands of jobs because of the way our economy is structured under Commonwealth.

Commonwealth has brought political stability to Puerto Rico for over four decades. On it rests our economic and social progress. Commonwealth has the flexibility to preserve Puerto Rico as a viable society. It is a successful and enduring experience in creative statesmanship.

We are now called upon to reinvigorate that relationship. To build a stronger Commonwealth economy and a politically stronger Commonwealth, we are called upon to enhance the strength and dignity of the people of Puerto Rico, the stability of our region, and the democratic values that we share.

Thank you very much.

[The prepared statement of Governor Hernandez-Colon follows:]

STATEMENT BY

HONORABLE RAFAEL HERNANDEZ COLON
GOVERNOR OF THE COMMONWEALTH OF PUERTO RICO

ON S.712
TO PROVIDE FOR A REFERENDUM ON
THE POLITICAL STATUS OF PUERTO RICO

BEFORE THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

JUNE 1, 1989
2:00 P.M.

The structure of the Commonwealth proposal in the bills before you can best be understood by a deeper look at the nature and thrust of the Commonwealth relationship.

In the early part of this century when the United States was shaping its policy regarding the status of Puerto Rico, Felix Frankfurter wrote that "one of the great demands upon inventive statesmanship is to help evolve new kinds of relationships so as to combine the advantages of local self-government with those of a confederated union. Luckily, our Constitution has left this field of invention open." The creation of the Commonwealth relationship was indeed such an act of inventive statesmanship.

The singular character of the relationship has been repeatedly stressed by the courts. The Supreme Court of the United States remarked in 1976:

"Puerto Rico occupies a relationship to the United States that has no parallel in our history. . . ." It is not a state, yet its degree of autonomy is not less than that of a state. In several cases the United States Supreme Court has held that Puerto Rico is, to the same degree as a state, "sovereign over matters not ruled by the Constitution." It is not a territory either, as the statehood proposal would have this Committee hold. The Court of Appeals for the First Circuit has ruled that "Puerto Rico's status changed from that of a mere territory to the unique status of Commonwealth."

This was precisely the change intended by the Congress in 1952 in order to end the colonial relationship and precisely the change recognized by the United Nations in 1953 declaring that the colonial relationship had ended.

The Commonwealth relationship represents, in sum, a new, creative way of joining a community with a distinct historical heritage and cultural identity, a people in their own right, to the United States of America.

The realization of this fact has far-reaching consequences. In judging the advisability of changes to the Commonwealth relationship, familiar analogies must be cast aside. The yardstick is not whether a given power is or is not enjoyed by a State. The test is whether the proposed reform is in line with the reason and purpose of the unparalleled Commonwealth relationship.

The last four decades have seen the establishment and consolidation of Commonwealth. The coming decades should mark the age of its enhancement. Principles inherent in our relationship can and should now be developed to their full potential.

The referendum proposition for the enhancement of Commonwealth will appear in the ballot, in Spanish, as follows:

> "El Estado Libre Asociado se fortalecerá para acelerar el desarrollo económico y social y alcanzar la máxima autonomía cultural y política del pueblo de Puerto Rico en su unión permanente con los Estados Unidos sobre los pilares de común defensa, común mercado, común moneda, y el vínculo indisoluble de la ciudadanía americana."

In English it would read as follows:

> "The Commonwealth association with the United States shall be enhanced to enable the People of Puerto Rico to accelerate their economic and social development and attain maximum cultural and political autonomy within permanent union with the United States based on the irreversible bond of American citizenship, a common defense, a common market, and a common currency."

Our proposal, detailed and specific, is in stark contrast to those of Statehood and Independence. Neither contains a ballot proposition. It should be required of them. Throughout this process the people of Puerto Rico should know the precise contours of the status options presented to them. Ambiguity, fill-in the blanks, saying one thing in Washington and another in San Juan should be avoided. The people of Puerto Rico are entitled to an informed choice. Voting in the dark is far scarier than whistling in the dark.

A majority vote for Commonwealth should establish a policy to enhance the Commonwealth relationship by:

-- encouraging the acceleration of Puerto Rico's economic and social development;

-- helping the attainment of maximum political autonomy within permanent union with the United States;

-- securing more equitable participation in federal entitlement programs for individuals;

-- assuring increased participation in United States governmental decisions affecting Puerto Rico;

-- safeguarding the distinct cultural identity of the people of Puerto Rico; and

-- PROTECTING THE BILATERAL, NON-COLONIAL NATURE OF OUR RELATIONSHIP.

THIS POLICY WOULD GOVERN THE NEXT PHASE OF THE COMMONWEALTH RELATIONSHIP. THE ELEMENTS OF THIS POLICY HAVE BEEN PRESENT SINCE ITS CREATION. THEIR FORMAL ADOPTION AND CONTINUED IMPLEMENTATION AS FEDERAL POLICY WILL ASSURE THAT A RELATIONSHIP, WHICH AT THE TIME IT WAS ESTABLISHED, WAS WITHOUT PARALLEL IN AMERICAN HISTORY, WILL LONG FLOWER AND BEAR FRUIT.

A PRIME TEST FOR THIS POLICY IS THE APPLICABILITY IN PUERTO RICO OF FEDERAL STATUTORY LAW. SINCE 1900, THE RULE FOR APPLICABILITY HAS BEEN THE FOLLOWING: "THE STATUTORY LAWS OF THE UNITED STATES NOT LOCALLY INAPPLICABLE. . . HAVE THE SAME FORCE AND EFFECT IN PUERTO RICO AS IN THE UNITED STATES, EXCEPT THE INTERNAL REVENUE LAWS." THIS OLD PROVISION RAISES VEXING PROBLEMS. NO MECHANISM WAS EVER CREATED TO DETERMINE WHICH FEDERAL LAWS ARE APPLICABLE AND WHICH ARE NOT. THE HISTORICAL RESULT HAS BEEN THE OFTEN INDISCRIMINATE EXTENSION OF FEDERAL LAWS TO PUERTO RICO EVEN WHEN DIFFERING CONDITIONS HAVE CALLED FOR A DISCRETE, DIFFERENTIATED APPROACH.

GIVEN THE FACT THAT THE COMMONWEALTH RELATIONSHIP DOES NOT ENVISAGE VOTING REPRESENTATION IN CONGRESS, BUT RATHER A BROADER LOCAL AUTONOMY, THE 1900 GENERAL STANDARD OF INAPPLICABILITY MUST BE FLESHED OUT IN ORDER TO ACHIEVE GREATER COHERENCE WITH THE PRINCIPLE OF GOVERNMENT THROUGH THE CONSENT OF THE GOVERNED. GENERIC CONSENT TO ALL FEDERAL LAWS SHOULD GIVE WAY TO SPECIFIC CONSENT SO THAT FEDERAL LAWS MAY

BETTER ACCOMMODATE OUR DIFFERING SOCIAL AND ECONOMIC REALITY. THE UNIQUENESS OF OUR RELATIONSHIP REQUIRES THAT A DEVICE BE FASHIONED FOR PUERTO RICO TO HAVE A MEANINGFUL SAY IN THE APPLICABILITY OF FEDERAL LAWS.

OTHER SOCIETIES HAVE MET THIS PROBLEM. THE BRITISH SOLUTION WAS THE STATUTE OF WESTMINSTER OF 1933. LAWS ENACTED BY THE BRITISH PARLIAMENT DID NOT APPLY IN A DOMINION WITHOUT ITS CONSENT. GUAM HAS REQUESTED AN ANALOGOUS SOLUTION. OUR PROPOSED SOLUTION IS DIFFERENT. CONSENT IS GRANTED TO THE APPLICABILITY OF FEDERAL LAWS RELATING TO FOREIGN RELATIONS, DEFENSE AND NATIONAL SECURITY, CITIZENSHIP, AND TO ENTITLEMENT PROGRAMS WHICH ARE RIGHTS INHERENT TO U.S. CITIZENSHIP. OTHER FEDERAL LAWS ARE APPLICABLE ONLY IF CONSISTENT WITH THE POLICY, UNLESS CONGRESS FINDS THAT AN OVERRIDING NATIONAL INTEREST REQUIRES THEIR APPLICATION IN PUERTO RICO. AS UNDER CURRENT LAW, LOCAL INAPPLICABILITY IS SUBJECT TO JUDICIAL DETERMINATION. OUR PROPOSAL ALSO INCLUDES A MECHANISM FOR CASE BY CASE PARTICIPATION BY THE COMMONWEALTH IN THE DETERMINATION OF LOCAL INAPPLICABILITY. RULES AND REGULATIONS RECEIVE ANALOGOUS TREATMENT, AND FEDERAL AGENCIES WOULD BE REQUIRED SEPARATELY TO CONSIDER THE CONSISTENCY WITH THE POLICY OF ANY PROPOSED ACTION.

AS WE ENTER A NEW CENTURY AND FACE THE CHALLENGES OF AN EVER MORE INTERDEPENDENT WORLD ECONOMY, PUERTO RICO CANNOT EXIST AS AN ISLAND BY ITSELF, DISCONNECTED IN GEOGRAPHY OR SEPARATE IN ITS FUTURE AND FATE FROM THE REST OF THE CARIBBEAN AND THE WORLD. WE ARE PLAYING A VITAL ROLE IN PROMOTING THE

ECONOMIC DEVELOPMENT AND POLITICAL STABILITY OF THE CARIBBEAN BASIN AND WE WANT TO DO MORE.

PUERTO RICO'S INTERNATIONAL ROLE HAS BEEN RECOGNIZED BY THE UNITED STATES. TO FURTHER OUR CONTRIBUTION TO NATIONAL SECURITY AND REGIONAL DEVELOPMENT, PUERTO RICO REQUIRES A CLEARER FEDERAL POLICY IN SUPPORT OF OUR INTERNATIONAL ROLE. OUR PROPOSAL BUILDS ON EXISTING PRACTICE, AND WOULD ENABLE THE COMMONWEALTH TO TAKE OFFICIAL ACTIONS TO PROMOTE ITS INTERNATIONAL INTERESTS, PROVIDED THE PRESIDENT DOES NOT DETERMINE THEY IMPERIL THE FOREIGN RELATIONS OR NATIONAL DEFENSE OF THE UNITED STATES.

THIS PROVISION WILL INTRODUCE A MUCH-NEEDED CERTAINTY, AND AGILITY IN DECISION-MAKING, TO PUERTO RICO'S INTERNATIONAL ACTIONS, AND WILL FURTHER OUR COMMON INTEREST IN WIDENING OPPORTUNITY IN THE CARIBBEAN.

INTERNATIONAL COMMERCE AND TRADE ARE INCREASINGLY IMPORTANT AS THE WORLD ECONOMY BECOMES MORE GLOBALIZED. OUR PROPOSED ENHANCEMENT OF COMMONWEALTH WOULD ASSURE PUERTO RICO THE TOOLS TO PROSPER IN THE NEW ECONOMIC DYNAMICS.

PUERTO RICO IS HIGHLY DEPENDENT ON MARITIME AND AIR TRANSPORTATION. IN RECENT YEARS WE HAVE ESTABLISHED SAN JUAN AS THE AVIATION "HUB" OF THE CARIBBEAN, THE GATEWAY BETWEEN LATIN AMERICA, AND NORTH AMERICA, AND EUROPE. OUR AVIATION PROPOSAL WOULD DESIGNATE PUERTO RICO AS AN "OPEN PORT" FOR FOREIGN AIR CARRIERS.

PRESENTLY, FOREIGN CARRIERS INTERESTED IN SERVING PUERTO RICO ARE OFTEN UNABLE TO OBTAIN OPERATING AUTHORITY.

Under our proposal, while remaining within the deregulated U.S. domestic regime and subject to FAA jurisdiction for safety matters, the Commonwealth would negotiate with foreign governments bilateral air transport agreements insofar as they affect Puerto Rico. This would be subject to Presidential review for foreign policy concerns.

Puerto Rico is uniquely dependent on maritime transportation. Eighty-six percent of our imports comes by ocean-going vessels, over 66 percent of that from the United States. This ocean-going commerce has been subject to competing regulatory regimes, generally unresponsive to Puerto Rico's need for the lowest possible maritime transportation rates. Annual rate increases of over 10 percent, well in excess of inflation, have not been uncommon.

We do not propose to eliminate the Jones Act provision requiring the use of U.S. bottoms in transporting outgoing and incoming cargo and passengers between Puerto Rico and the United States. It burdens us, but we recognize the overriding national interest. We do propose, however, that the Commonwealth establish its own commission chartered to regulate the services and rates for the Puerto Rico-United States trade in ways that, given the Jones Act, assure the lowest maritime rates.

We further seek to accelerate Puerto Rico's participation in the world economy by expanding access for our products in foreign markets, and promoting our agricultural self-sufficiency.

UNDER THE GENERALIZED SYSTEM OF PREFERENCES ("GSP"), AND OTHER REGIONAL SYSTEMS OF PREFERENCES, INDUSTRIALIZED NATIONS PROVIDE UNILATERAL, PREFERENTIAL TREATMENT TO IMPORTS FROM DEVELOPING COUNTRIES, TERRITORIES, AND OTHER POLITICAL ENTITIES. ALTHOUGH PUERTO RICO'S INCOME QUALIFIES IT FOR GSP TREATMENT, OUR EXPORTS DO NOT NOW RECEIVE SUCH PREFERENTIAL TREATMENT ENJOYED BY, AMONG OTHERS, THE U.S. VIRGIN ISLANDS, GUAM, AND AMERICAN SAMOA. OUR PROPOSAL WOULD ENCOURAGE OTHER COUNTRIES TO CONSIDER PUERTO RICO AS A DEVELOPING AREA FOR PURPOSES OF THEIR RESPECTIVE GSP PROGRAMS, AND ASSURE UNITED STATES COOPERATION TOWARD THAT END.

SINCE 1930, PUERTO RICO HAS SET TARIFFS WITH RESPECT TO FOREIGN COFFEE TO PROTECT LOCAL PRODUCTION. OUR TRADE PROPOSAL EXPANDS THIS EXISTING AUTHORITY TO ALLOW THE IMPOSITION OF TARIFF DUTIES ON FOREIGN-ORIGIN PRODUCTS IMPORTED TO PUERTO RICO, OR TRANSSHIPPED THROUGH THE UNITED STATES, BUT ONLY TO THE EXTENT CONSISTENT WITH THE INTERNATIONAL OBLIGATIONS OF THE UNITED STATES. SUCH TARIFFS WOULD BE IN ADDITION TO THOSE APPLICABLE UPON ENTRY TO THE CUSTOMS TERRITORY OF THE UNITED STATES. THIS SPECIAL TARIFF-SETTING AUTHORITY WOULD PERMIT THE COMMONWEALTH TO PROVIDE ADEQUATE PROTECTION AND ENCOURAGEMENT TO THE PRODUCTION OF A NARROW CATEGORY OF PUERTO RICAN PRODUCTS, PRIMARILY AGRICULTURAL IN NATURE, OF SLIGHT INTEREST TO THE UNITED STATES, BUT VITAL TO PUERTO RICO. IT WOULD NOT AFFECT U.S.-ORIGIN MERCHANDISE WHICH WOULD CONTINUE TO ENJOY DUTY-FREE ACCESS TO PUERTO RICO.

LOOKING FORWARD TO THE NEXT CENTURY, AND THE EMERGING INFORMATION AGE, WE SEEK TO ESTABLISH PUERTO RICO AS A REGIONAL CENTER FOR THE CREATION OF INTELLECTUAL PROPERTY IN INDUSTRIAL DESIGNS AND COMPUTER CHIPS. WE HAVE COME A LONG WAY IN OUR ECONOMIC DEVELOPMENT, BUT AS LONG AS WE ARE WAY BEHIND THE U.S. NATIONAL PER CAPITAL INCOME -- ONLY ONE-THIRD -- WE MUST CONTINUE TO SEEK MECHANISMS FOR ECONOMIC GROWTH, PARTICULARLY IN THOSE TECHNOLOGIES SUITED TO A SMALL, DENSELY POPULATED ISLAND.

OUR PROPOSAL WOULD AMEND U.S. COPYRIGHT LAWS TO PROVIDE FOR ADDITIONAL PROTECTION TO INDUSTRIAL DESIGNS AND SEMICONDUCTOR CHIP PRODUCTS AND MASK WORKS, CREATED IN, OR FIRST MANUFACTURED IN PUERTO RICO.

TO A TROPICAL ISLAND ECONOMY, MARITIME RESOURCES ARE CRITICAL. OUR PROPOSAL WOULD GRANT THE COMMONWEALTH JURISDICTION OVER FISHERY AND OTHER MARITIME RESOURCES, LIVING AND NON-LIVING, AND WOULD PERMIT PUERTO RICO TO ESTABLISH ITS OWN EXCLUSIVE ECONOMIC ZONE.

PUERTO RICO'S ECONOMIC DEVELOPMENT WOULD BE ADVANCED IF FEDERAL FUNDS WOULD BETTER REFLECT OUR PRIORITIES AND NEEDS, AND PARTICULARIZED ECONOMIC AND SOCIAL CIRCUMSTANCES. WE PROPOSE TO IMPROVE THE UTILIZATION OF FEDERAL FUNDS BY EXTENDING TO PUERTO RICO AN AUTHORITY ANALOGOUS TO THAT NOW AVAILABLE TO THE TERRITORIES TO CONSOLIDATE FEDERAL GRANT-IN-AID PROGRAMS, ON AN AGENCY-BY-AGENCY BASIS. THIS PROPOSAL WOULD NOT COVER ENTITLEMENT PROGRAMS THAT PROVIDE GRANTS OR SERVICES TO INDIVIDUALS.

As we strive for accelerated economic development, we must keep in mind the need of U.S. citizens in Puerto Rico for more equitable participation in federal programs providing them with grants or services. We propose to achieve parity with the states over the next four years in the Nutritional Assistance Program, the equivalent of food stamps, AFDC, and Medicaid, and over eight years in the Supplemental Security Income (SSI) program.

We believe that U.S. citizens in Puerto Rico, like their counterparts in the States, are entitled to a minimal safety net, without requiring them to leave Puerto Rico to gain full assistance. An existing inequity under present law is that more than 121,000 aged or disabled Puerto Rican residents, not now eligible for assistance under SSI, each receive a total federal monthly assistance of $32, compared with $314 in the States. Inequities of this nature among fellow citizens are contrary to the essence and dignity of our common citizenship.

As stated earlier, another primary objective of the federal policy to be established is to accord the people of Puerto Rico greater participation in federal decisions affecting them. There are several ways to achieve this objective under Commonwealth. We propose increased participation through a role in federal appointments on the island, and a non-voting delegate to the Senate.

Currently, federal appointments serving in Puerto Rico are made with little, if any, consultation with the

GOVERNMENT OF PUERTO RICO. IN ORDER TO MAKE THE EXERCISE OF EXECUTIVE POWER MORE CONSISTENT WITH THE PRINCIPLE OF GOVERNMENT BY CONSENT, WE PROPOSE THAT THE APPOINTMENT OF ANY HIGH-RANKING FEDERAL OFFICER SERVING IN THE COMMONWEALTH, AS WELL AS ANY OTHER APPOINTMENTS SUBJECT TO SENATE CONFIRMATION, BE MADE FROM A LIST OF ELIGIBLE CANDIDATES RECOMMENDED BY THE GOVERNOR, WHO IS THE HIGHEST ELECTED OFFICIAL IN THE COMMONWEALTH.

PUERTO RICO HAS BEEN REPRESENTED IN THE HOUSE OF REPRESENTATIVES BY A RESIDENT COMMISSIONER SINCE 1900. HIS REPRESENTATION OF THE INTERESTS OF THE MORE THAN THREE MILLION UNITED STATES CITIZENS OF PUERTO RICO CONTRIBUTES TO THE DECISION-MAKING PROCESS OF THE HOUSE WITH RESPECT TO PUERTO RICO. WE SEEK SIMILAR REPRESENTATION IN THE SENATE. THE MULTIPLICITY OF LEGISLATIVE PROBLEMS AFFECTING PUERTO RICO AND THE SENATE'S EXCLUSIVE ROLE IN TREATY-MAKING AND PRESIDENTIAL APPOINTMENTS MAKE THIS REPRESENTATION VITAL TO US. OUR NON-VOTING REPRESENTATIVE IN THE SENATE WOULD HAVE ALL THE RIGHTS AND PRIVILEGES OF OTHER MEMBERS AS ARE COMPATIBLE WITH THE CONSTITUTION OF THE UNITED STATES.

THE EXERCISE OF FEDERAL JUDICIAL AUTHORITY MUST ALSO BE MADE MORE COHERENT WITH THE NATURE OF THE COMMONWEALTH RELATIONSHIP. AS THE SUPREME COURT HAS RECENTLY STATED, "A RIGID RULE OF DEFERENCE TO INTERPRETATIONS OF PUERTO RICO LAW BY PUERTO RICO COURTS IS PARTICULARLY APPROPRIATE GIVEN THE UNIQUE CULTURAL AND LEGAL HISTORY OF PUERTO RICO." IN LINE WITH THIS RULING, WE SET FORTH AN ABSTENTION RULE TO GOVERN

THE FEDERAL COURTS' INTERPRETATION OF UNCONSTRUED PUERTO RICAN STATUTES AND REGULATIONS.

TO ASSURE UNIFORMITY IN THE INTERPRETATION OF THE ESSENTIAL ELEMENTS OF THE COMMONWEALTH RELATIONSHIP, AND IN THE INTERACTION OF FEDERAL JUDICIARY WITH THE COMMONWEALTH GOVERNMENT, WE PROPOSE TO CENTRALIZE CONSIDERATION OF THESE MATTERS IN A SINGLE COURT.

TO FURTHER THE ACCESSIBILITY OF FEDERAL COURTS TO CITIZENS SEEKING TO VINDICATE THEIR RIGHTS, 60 PERCENT OF WHOM SPEAK NO ENGLISH, WE PROPOSE THAT THE PROCEEDINGS BE CONDUCTED IN SPANISH AT THE REQUEST OF ANY PARTY. IN SUCH CASES, TO FACILITATE APPEALS, AND AVOID DELAYS, THE COURT RECORD WILL BE KEPT IN BOTH ENGLISH AND SPANISH.

TO STRENGTHEN LAW ENFORCEMENT, WE WOULD VEST COMMONWEALTH OFFICIALS WITH AUTHORITY TO IMPLEMENT THE IMMIGRATION LAWS. DUE TO ITS RELATIVELY HIGHER STANDARD OF LIVING AND GREATER EMPLOYMENT OPPORTUNITIES, THE COMMONWEALTH HAS ATTRACTED MANY ILLEGAL ALIENS FROM NEARBY ISLAND NATIONS. THE ADMITTEDLY LIMITED RESOURCES OF THE INS ON THE ISLAND HAVE MADE IT IMPOSSIBLE EFFECTIVELY TO ENFORCE THE IMMIGRATION LAWS. THE ADDITION OF COMMONWEALTH RESOURCES TO THE PATROL OF OUR BORDERS WOULD BOTH STOP ALIENS WHO ATTEMPT TO ENTER ILLEGALLY, AND COMBAT ILLEGAL TRAFFIC IN DRUGS.

CENTRAL TO THE FEDERAL POLICY TO BE ESTABLISHED THROUGH THE REFERENDUM IS THE PROTECTION OF THE DISTINCT IDENTITY OF THE PEOPLE OF PUERTO RICO. UNDER OUR PROPOSAL, PUBLIC LANDS AND PROPERTIES SIGNIFICANT TO OUR PEOPLE AND

HISTORY WOULD BE RETURNED TO THE COMMONWEALTH. TITLE TO REAL PROPERTY ACQUIRED BY THE UNITED STATES FROM SPAIN UNDER THE TREATY OF PARIS, THE SO-CALLED CROWN LANDS, AND TO THE LANDS ADMINISTERED UNDER THE CARIBBEAN NATIONAL FOREST ("EL YUNQUE"), WOULD BE CONVEYED TO PUERTO RICO. THE UNITED STATES AND THE COMMONWEALTH WOULD NEGOTIATE CONDITIONS FOR THE ADMINISTRATION OF SUCH LANDS AND PROPERTIES. NO MILITARY BASES WOULD BE AFFECTED BY THIS PROPOSAL.

FINALLY, WE INCLUDE A NUMBER OF OTHER IMPORTANT PROPOSALS -- THE EXCLUSION OF PUERTO RICO FROM THE COASTAL BARRIERS RESOURCE SYSTEM, THE DELEGATION OF THE ADMINISTRATION OF FEDERAL LABOR LAWS, THE AUTHORITY TO ISSUE PASSPORTS AND SPECIAL ENTRY VISAS, AND THE NECESSARY AUTHORIZATION FOR THE ADOPTION OF VOLUNTARY PROGRAMMING CODES BY BROADCASTERS.

SUCH IS OUR PROPOSAL. DETAILED AND SPECIFIC, TO PROVIDE FOR A MORE EFFECTIVE GOVERNANCE FOR THE PEOPLE OF PUERTO RICO, TO ASSURE OUR ECONOMIC PROGRESS, POLITICAL STABILITY AND CULTURAL IDENTITY.

WE MUST TAKE EXCEPTION WITH THE STATEHOOD PROPOSAL, HOWEVER. NOT TO ARGUE BEFORE YOU THE MERITS OF STATEHOOD AS AGAINST COMMONWEALTH, THAT WE SHALL DO BEFORE THE PUERTO RICAN PEOPLE IN THE REFERENDUM. BUT RATHER TO POINT OUT THE LACK OF SPECIFICITY OF THE PROPOSAL IN VERY CRUCIAL MATTERS WHICH NEED TO BE ADDRESSED BY THE CONGRESS IN ORDER TO PROVIDE THE PEOPLE OF PUERTO RICO WITH CONCRETE TERMS UPON WHICH TO MAKE THEIR DECISION.

Statehooders fail fully to define the bizarre sort of status option they propose. In order to continue their age-old practice of saying one thing in Washington and another in San Juan, statehooders advisedly keep their proposal vague and imprecise. In impeccable double-speak, they contend in San Juan that the 51st state could march under its own flag separate from the U.S. in the Olympics; in Washington they fail to propose the needed amendment to the Amateur Sports Act. In San Juan, as part of the incessant talk of a puzzling "jíbaro" state, they claim the primacy of the Spanish language in the 51st state; in their proposal to you, they only address the official languages of the governmental bureaucracy, but fail to spell out what the language of instruction in Puerto Rican schools should be which is the crucial factor if English is ever to become a primary language in Puerto Rico.

In San Juan, they specifically assert that the federal government shall fully assume Puerto Rico's $14 billion external debt; in their proposal, they dance around the issue, and leave blanks at the key junctures.

In San Juan, they assert that Section 936 of the Internal Revenue Code upon which one-third of the jobs in our labor force depend, will be preserved for 25 years after Puerto Rico becomes a state. In the proposal before you, they present no self-executing amendment to bring this credit into effect under statehood, which is constitutionally impossible given the constitutional clause requiring uniformity of taxation throughout the States of the Union. When the people of Puerto Rico make their choice, they have a right to know whether Section 936 can remain for 25 years or not. Such a vital matter cannot be left for subsequent consideration at an unspecified time.

A special Puerto Rican tariff protects our coffee growers under Commonwealth. Without it, coffee production on the island would be wiped out. Such a tariff raises serious constitutional problems under statehood. The statehood proposal provides for this issue to be addressed after the referendum, in an omnibus bill. Such a matter, again, cannot be left to subsequent consideration, but must be decided by the Congress at this time.

The reality is that statehood, without addressing and satisfactorily resolving these issues, would result in chaos and decline. Our developing economy cannot survive the additional heavy burden of federal taxation required under the Constitution's equal footing doctrine and tax uniformity clause. Independent studies have shown that statehood would result in the destruction of thousands of jobs because of the way our economy is structured under Commonwealth.

Commonwealth has brought political stability to Puerto Rico for over four decades; on it rests our economic and social progress.

Commonwealth has the flexibility to preserve Puerto Rico as a viable society. It is a successful and enduring experience in creative statesmanship. We are now called upon to reinvigorate that relationship; to build a stronger

Commonwealth economy and a politically stronger Commonwealth. We are called upon to enhance the strength and dignity of the people of Puerto Rico, the stability of our region, and the democratic values that we share.

The **Chairman**. Thank you very much Governor.

Governor, in your amendment to section 731(b), which states the general principle of government by consent, you have a series of amendments which seem to put in issue, or leave ambiguous, the question of sovereignty. The Commonwealth proposal does not directly seek to limit congressional authority, but, on the other hand, does not directly address the issue. The actual effects of this section is unclear. It redefines the Federal/Puerto Rican relationship under Commonwealth to limit congressional authority and strengthen the argument that it is a "bilateral compact".

The U.S. law regarding Puerto Rico has traditionally used such terms as "self-government" and "government by consent", not such words as you used, such as "autonomous", which suggests sovereignty.

Now, my question is, what is your intent? Is your intent to change the question of sovereignty?

Governor **Hernandez-Colon**. No, the question of sovereignty as it stands today, would remain the same. That is, the United States has sovereignty over Puerto Rico and it would continue to have sovereignty.

Puerto Rico has sovereignty under our Constitution over such matters as have been entrusted to us. Our Constitution specifically says that it is a sovereign act of the Puerto Rican people in forming their own government.

Now, the relationship between these two sovereign entities, which may be thought of as, in a way, similar to the relationship of a state of the Union to the Federal Government, and the state's sovereignty and the sovereignty of the Federal Government, is defined, in the case of Puerto Rico, through the Federal Relations Act, which we called the Compact.

In the case a state of the Union, it is defined by the Constitution of the United States.

The **Chairman**. Well, do you understand what I mean by the ambiguity which such phrases as "bilateral compact", and "autonomous present"? How that could give ambiguity to your proposal? I mean, what you are saying is you do not mean, by those phrases, a difference in the present relationship as it exists.

Governor **Hernandez-Colon**. That is correct. We are seeking enhancements in the present relationship. We do consider the present relationship a non-colonial relationship, a relationship where we are governed by our own Constitution and bound to the United States by a bilateral compact.

And we intend for the relationship to continue the same way.

The **Chairman**. I just wanted to be clear on that. We might use some of the same descriptive words, while at the same time seeking to make some of the specific changes.

Governor **Hernandez-Colon**. If any words are found here that could be interpreted as, that by "autonomous," we mean the sovereignty of a separate republic; they should not be interpreted that way at all, in any context. We do not mean to constitute a separate republic nor an associated republic, nor any other status of a different nature than the one we have right now.

The **Chairman**. Governor, you have a proposal here that, if you, as Governor, would notify the Congress of an inconsistency and the

Congress did not enact a specific finding within 60 days, the President is directed to proclaim that the statute no longer applies.

I think this would violate the question of separation of powers, and, specifically, the Chadha decision dealt with that. Have your lawyers looked at that question?

Governor HERNANDEZ-COLON. Our lawyers have looked at that question specifically. We have a legal memorandum on it right here that we can submit for the record. But I would very much suggest that on this matter, our lawyers and our staff people could meet with the committee staff and fully develop our points.

The CHAIRMAN. Well, that is good. I think we would have to on that issue because that seems to me to violate certainly the spirit of the Chadha decision, and separation of powers and, probably, is not a good way to do it. To give the President the right to interpret a law as applying or not applying. Perhaps I can be looking at that.

Governor HERNANDEZ-COLON. We will submit it at this time. Let me say, Mr. Chairman, that we fully appreciate the fact that you are aware of the problem that we are trying to deal with, and that you find some problems in the solution that we have proposed.

The CHAIRMAN. Let me see if I can state the problem. It is one of, first, clarity and intent, and even more basic than that, of getting the Congress and the agencies and the Administration to focus on the question of what their intent is. Is that correct?

Governor HERNANDEZ-COLON. That is correct and, in a broader way, it is to say that in those areas which we have not excluded, such as foreign relations, defense, citizenship, national security, or the programs providing individuals with grants, that in all other areas the legislation to be approved by Congress would be consistent with the policy of the enhanced Commonwealth created through this law.

So that where it is not necessary or convenient that the matter be regulated by Congressional statute, a Commonwealth statute could occupy that territory.

The CHAIRMAN. But it would be up to the Congress, or the agency, or the Administration to interpret the phrase "consistent with federal policy", or "consistent with Puerto Rico". Is that correct? I mean, that is not something for the courts to determine, that is something for the agency, or the Administration, or the Congress to determine?

Governor HERNANDEZ-COLON. There is a mechanism providing for the Puerto Rican Government and the Congress to make that determination. Where the Puerto Rican Government would make the proposal to the Congress.

There is also a provision for judicial review of inconsistencies with regards to laws falling in that category. So there are two mechanisms running parallel.

The CHAIRMAN. Well I am certainly fully in sympathy with the right of Puerto Rico to focus the intent and to state it, and it seems to me we ought to at least have a rule of statutory construction to have what may amount to a partial veto of law or regulations after the fact.

It seems to me to be not good policy, and not to be workable, but I do not know what the reaction of the Committee will be to having a Resident Commissioner in the Senate. There are a lot of arguments pro and con to that. But, to the extent that we have that, would that solve a lot of these problems where you could, during the debate of a bill, you could ask a question, does it apply?

Governor HERNANDEZ-COLON. That would certainly help a great deal. It is still a problem existing at this moment even with the House legislation. But, certainly, the presence of the Commissioner could help a great deal.

I would like the Commissioner, who is here with me, that he could perhaps address this question and give us the benefit of his experience.

Mr. FUSTER. Mr. Chairman and Members of the Committee, the first part of our proposal, the one that deals with the federal policy, would set some standards to guide Congressional/Executive action in deciding which legislation and regulation should be applicable to the Commonwealth of Puerto Rico.

You raised that question this morning, Senator Johnston, whether this was the best way to do it or not, and I think that you should know that in most of the cases the problems that we envision are actually solved through the internal dealings that the Resident Commissioner has with the different Congressional committees whenever legislation comes up.

I have a list, here, for example. In the last four years, of at least six cases in which important, and even major pieces of national legislation, at the beginning were dealing with Puerto Rico the same way as it dealt with the states as a whole. And after we intervened to show why it would create a very difficult and distressing situation on the island, the adjustments were made by the corresponding committee and, eventually, enacted into law.

Just this week, we have dealt with a couple of those situations in the House side. So, I believe that setting those standards would be of great help and in most cases it would not lead to litigation as you were expressing a concern about, but, rather, making it easier for the Resident Commissioner to be able to draw to the attention of members of Congress the incongruities that might exist between the national intent, and the particular circumstances of the island.

The CHAIRMAN. Well, have you had any problems presenting your case and then having the Congress turn you down?

Mr. FUSTER. In most cases that has not happened.

The CHAIRMAN. Can you recall a case in which you were turned down?

Mr. FUSTER. I have been trying for a while and, as I say, I have six cases.

The CHAIRMAN. I know you are very effective over in the House.

Mr. FUSTER. We were able to change the legislation in six cases. In the four years I really do not recall a case other than dealing with federal funding.

When it comes to federal funding, there are other kinds of considerations that come into the picture, and we have never been turned down. We just have not obtained as much as we would want.

The CHAIRMAN. But, that would not be determined——

Mr. FUSTER. That is right. It would not fall under this policy, probably the kind of legislation that is exempt from this process.

But, I must admit that in practically all of the other cases I can remember in the last five years, once we presented our case to the committee, the committee has made the necessary adjustments.

Just last week, to give you one example, we were dealing with the proposal to regulate U.S. domestic shippers in order to allow them to make arrangements without violating the antitrust laws. There was one clause in the proposal on the House side that no state government should subsidize a domestic shipper unless it subsidizes them all in the same way.

We pleaded our case that the Commonwealth has its own domestic shipping line and something like that would create a very serious problem for Puerto Rico, because for all practical purposes, we would have to close down the Commonwealth shipping company which the government has made a huge investment in.

After some discussion, the decision was made by Chairman Jones to strike out that section because the purposes being pursued by the legislation were not affected in any way, and it would create a very disastrous condition in Puerto Rico. This was just last week.

That has been my experience in the past. But, I think that in spite of that, the setting up of standards might be very good. It would make our work a lot easier. It would make it stable. The introduction of the standards I know would certainly help in the administrative process. There we can probably identify times in which we were not able to get adjustment in the regulations because the persons in charge felt that they were not compelled by any special concern about Puerto Rico.

The CHAIRMAN. Well, I wish you would give it to us in writing, after you have a chance to think about it. Some examples under the regulations of how Puerto Rico's particular circumstances were not considered and how this language would have affect.

Frankly, as far the law is concerned, it seems to me that you have made two cases. First of all, that you are very effective over there in House. And, secondly, that we do not need a whole superstructure of legislation to replace you. After all, somebody might be saying we do not need Fuster if we have all these laws, and I am sure you would not want that.

Mr. FUSTER. But it might also be, Senator, that these have been very good times in which we have very sensitive members of Congress in tune to our own needs, and we might not be able to guarantee that for the future. If we put in the statute, then it is settled.

Governor HERNANDEZ-COLON. Also, there is the question of the whole body of federal legislation that is already enacted.

The CHAIRMAN. Now, for that purpose, we have, in the Marianas Islands Covenant a federal laws commission set up to review that body of laws and make recommendations. Would not that adequately work here? Should we have that done anyway? Have a commission of experts to go through line by line and say this should not apply, or this should apply?

I do not think you are going to find an unsympathetic, certainly not an unsympathetic committee here. I mean if something does not properly apply to Puerto Rico, we would want to relieve you of the burden of it.

Governor HERNANDEZ-COLON. We believe that such a mechanism could be very useful and would certainly be most willing to look at it and see how it can be shaped up.

The CHAIRMAN. Well, have your staff or your attorneys check with ours and we can get you copies of that Marianas Covenant. It is in the covenant. That is one way to get it.

Now, that leads us to the question of regulations. How do we deal with regulations? It seems to me that you make a stronger case with regulations than you do with statute, because, after all, if they are challenged and cannot make the case, then they can always rewrite their regulations if they should later change their mind.

There has got to be a mechanism here, and, perhaps, you have hit upon it with respect to regulations. I think your concern is certainly a proper one, because we do not want insensitive bureaucrats just willy-nilly making things applicable to Puerto Rico or not making them applicable to Puerto Rico without adequate thought and consultation.

But, we will have to look at that, at that mechanism, to see if it works.

Now, with respect to aviation, as I understand it, you would want the Federal Government to continue to regulate air safety.

Governor HERNANDEZ-COLON. Yes.

The CHAIRMAN. You want to continue to be able to get airport grants and that sort of thing.

Governor HERNANDEZ-COLON. Yes.

The CHAIRMAN. But to be able to make a separate deal with air carriers, foreign air carriers.

Governor HERNANDEZ-COLON. Yes.

The CHAIRMAN. Frankly, that is where we need the FAA and the Commerce Committee to give us their advice on why that is important.

Can you give us your own jusitification for it? Why is that important to Puerto Rico?

Governor HERNANDEZ-COLON. Well, it is important in two ways. It is important for tourism and it is important for our efforts in the Caribbean.

Now, with regards to our tourism, for instance, we have sought to bring in flights, directly, say, from Italy, and because there are competing interests in the mainland U.S., which have nothing to do with Puerto Rico, the flights directly from Italy to Puerto Rico, then these other interests are taken into consideration to decide whether Alitalia will fly directly to Puerto Rico from Rome, or Milan, or wherever.

Also, in our dealings with the Caribbean countries, we were trying to bring about an integration of the region. We have constant petition of these countries for airlines from Puerto Rico to fly out to the countries. Again, a matter which we can resolve through going the usual bureaucratic procedures, but which, if we had the power, we could function much more efficiently and better in making those decisions and implementing them and integrating the whole region in terms of air transport.

The CHAIRMAN. We have a vote on. Let me turn the questioning over to Senator McClure while I go vote and I will come immediately back.

Senator McCLURE. I will probably have to recess the hearing long enough to go vote myself, but allow me to ask a couple of questions here that are pertinent to this discussion, at this point anyhow.

As I read your proposal, Section 3 would establish a new federal policy with respect to Puerto Rico by establishing a new set of terms and procedures to govern the applicability of federal laws and regulations on the island.

However, the specific effect of the provisions is unclear. For example, the provision in the Federal Relations Act, establishing the federal Puerto Rico relationship on the principle of government by consent, would be replaced by language recognizing a bilateral relationship between the U.S. and the autonomous body politic of Puerto Rico. I think at least a portion of those are words used in your proposal.

What is the specific meaning of these phrases? Would they fundamentally change the current relationship? And, if so, how?

Governor HERNANDEZ-COLON. They would not. They would maintain the current relationship as it is.

Senator McCLURE. Do you believe that the authority of Congress or the effect of U.S. sovereignty would be permanently changed by the language?

Governor HERNANDEZ-COLON. No. Not by this language. However, there are provisions here where, such as the one we were just discussing on aviation, where power over that matter would be transferred to the Government of Puerto Rico.

Senator McCLURE. So, it would be your intention to make specific changes, but the language is rather general. For instance, the language allows you to, in effect, opt out of the application of certain federal statutes or regulations. It is a fundamental change in the relationship that now exists, is it not?

Governor HERNANDEZ-COLON. I would say that is a refinement in the criteria for applicability of federal laws. Which, today, the criteria is those laws which are not "locally inapplicable," which is a rather vague and confusing standard.

So, this is a more precise and concrete standard. It takes up on the criteria already developed by the courts with regard to the locally inapplicable standard. But, I would not call this a change in the nature of the relationship. It certainly enhances the autonomy of, or the self-government of, the Commonwealth.

Senator McCLURE. If I could refer back, for a moment, to Subpart 1 which, in the proposal in S. 712 starts on page forty-two and runs over to page forty-three of the printed bill.

Some of the statements appear to me to be, at least partially inaccurate, although in practical effect they may state the current situation. If, however, an attempt is made to codify these references, debate could be provoked which would not be useful to an improved relationship.

It is my view that we ought to delete such references unless they are indeed essential. Because the statements do not have the force or status of the law, if I understand, your statement of purposes is not a codification, it does not have the force of law.

Governor HERNANDEZ-COLON. It serves to express the intention of the law, it is a point of reference for people, or judges, or whomever, who might sit and interpret the law. It is not the law itself.

Senator MCCLURE. Let me probe that just a moment further in the moment or so I have before I have to go over to vote.

On line 10, you have used the term our own sovereign right. Does this mean that it is your view that at some moment the United States has relinquished sovereignty over Puerto Rico?

Governor HERNANDEZ-COLON. Not total sovereignty, but enough sovereignty so that the people of Puerto Rico, in their exercise of their natural right to adopt a constitution and create a Commonwealth, to that extent there was a relinquishment of sovereignty.

Senator MCCLURE. But only to that extent?

Governor HERNANDEZ COLON. Only to that extent, that is correct.

Senator MCCLURE. What do you mean on line 11, autonomous political community? Does this have the same meaning as self-governing?

Governor HERNANDEZ-COLON. Yes it does, exactly.

Senator MCCLURE. Even though you are not totally self-governing?

Governor HERNANDEZ-COLON. The word self-governing is a rather broad word that can contain, more or less, self-government. But the self-government to which we are referring is enough self-government as to have given Puerto Rico the recognition of the United Nations in 1953 as a self-governing political community and, thereby, to have taken us off the list of colonies upon which the U.S. had to report.

Senator MCCLURE. Then it is your intent to reflect current status and not to make any change in the current status?

Governor HERNANDEZ-COLON. That is correct. As a matter of fact, I believe that these were the words used by the U.N. in their resolution when they recognized the actions of the people of Puerto Rico and Congress in creating the Commonwealth.

Senator MCCLURE. What is the meaning of the words "permanent union" as found in lines 11 and 12?

Governor HERNANDEZ-COLON. The meaning of permanent union, as we understand it, is a relationship between the people of Puerto Rico and the United States of America which is legally based on our American citizenship, which is irrevocable to us. And, which is drawn up under a compact entered upon between the Congress and the people of Puerto Rico to be changed by mutual consent.

This does not mean, in our interpretation, that the people of Puerto Rico may not choose another status. It means that it is a union meant to last on the basis of this compact for an indefinite time into the future.

Senator MCCLURE. When you say "mutual consent", you are talking about the basic structure and not the details of the laws?

Governor HERNANDEZ-COLON. Yes.

Senator MCCLURE. Although you have gone a little further than that in your proposal, in attempting to go a little further in determining which laws you would deem inapplicable to Puerto Rico.

Governor HERNANDEZ-COLON. I do not know what you mean.

Senator McClure. You have asked that you be able to, in effect, certify to the Congress which laws you believe should not be applicable to Puerto Rico.

Governor Hernandez-Colon. It is which laws would be inconsistent with the policies set out by the Congress in this law, approved by the people of Puerto Rico, and which would be in a limited category. Then, the Government of Puerto Rico could bring a law of the Government of Puerto Rico to the Congress and then put it against a U.S. statute which would be inconsistent against the policy.

Senator McClure. I understand that. I understand your statement, I am not sure I understand quite how it would be applied, and I would like to ask another question or two in that regard, but I have to go vote or I will miss my opportunity.

The Committee will stand in recess, subject to call of the chair.

[Whereupon, the subcommittee briefly recessed.]

The Chairman. Governor, I understand that you have a suggestion here to require, in effect, a Puerto Rican impact statement on federal projects or regulations before they can be made applicable to Puerto Rico.

Governor Hernandez-Colon. Yes. The proposal contains that item, page 47, Section E, from line 17 on.

The Chairman. Well, you know, it seems to me that this would be a burden for Puerto Rico. I just took a tour of Puerto Rico on one the Corps of Engineers' projects, and it seems to me, to have another impact statement on top of the environmental impact statement would be unduly burdensome to Puerto Rico.

Governor Hernandez-Colon. Well, perhaps it could be tied to the environmental impact statement. But the impact statement that we are proposing would be one relative to the policy and an impact statement with which only the Government of Puerto Rico could take exception, not any groups or other parties.

The Chairman. Could you give me an example of a problem that you have now that this would seek to solve?

Governor Hernandez-Colon. Well, a problem that we had in the past, I think, could be, an example where this could be easily understood, which was the use that the U.S. Navy made of the island of Culebra and the shelling of that island for target practice.

This type of federal action would then fall under the provision of this Section.

The Chairman. Well, I can well understand your idea on Culebra.

Governor Hernandez-Colon. Also, take the Coastal Barriers Act and a definition of the areas to be covered in Puerto Rico by the Interior Department in such a way as to engulf a great part, or perhaps all, of our land that is adjacent to ocean, which we can use for tourist development. Or the determination of floodable lands by FEMA.

The Chairman. The consistency of the action with such policy in that case would be the policy of the federal agency, whatever it may be?

Governor Hernandez-Colon. No, it would be the policies set out in Subpart 3, Number 2.

The CHAIRMAN. Would the idea there be that they could not take it if it was inconsistent with Part 3?

Governor HERNANDEZ-COLON. That would be the idea.

The CHAIRMAN. And that would be as interpreted by the court. I guess it would be in that case.

Governor HERNANDEZ-COLON. Ultimately.

The CHAIRMAN. Well, that would be the principles of Commonwealth. If one of the principles of Commonwealth is that Puerto Rico is an "autonomous body" and that no federal action can be taken unless consistent with Part 3, then no federal action could be taken that Puerto Rico has not specifically authorized, it seems to me.

And "maximum cultural and political autonomy", it seems to me that that is tantamount to a veto of any major federal action and one that would be interpreted by the court. That is why I say these words here are not what you mean, "autonomous body" and "political autonomy", and that sort of thing, that you do not mean, sovereignty——

Governor HERNANDEZ-COLON. A separate republic, we do not mean that, or an associated republic.

Senator McCLURE. May I ask a question at this juncture?

The CHAIRMAN. Of course.

Senator McCLURE. Now, recognizing that you reject, and I understand that you reject, a comparison between this and statehood, comparisons will be made.

In some respects, could not it be argued that what you're suggesting is a relationship between Puerto Rico and the Federal Government of the United States that is more favorable to the autonomy of Puerto Rico than any one of the fifty states today enjoys?

Governor HERNANDEZ-COLON. That is correct.

Senator McCLURE. So that you have a greater degree of autonomy than any of the states have?

Governor HERNANDEZ-COLON. That is correct. Because the nature of the relationship to the Union is one where we do not have the participation in the congressinal processes, or voting for the president. So, therefore, in order to make it more consistent with the principle of government by consent, then the autonomy of Puerto Rico as a political body is widened.

Senator McCLURE. What would you do if the Congress, in responding to that, said okay, you can have the advantage of this statute which you want only so long as you accept the restrictions or obligations of another statute which you do not want?

Governor HERNANDEZ-COLON. It is a proposal, we can either accept it or reject it.

Senator McCLURE. And is not that where this inevitably leads, in some respects? Towards that kind of an action by the Congress? I do not know what the courts are going to say with respect to a Chadha-like decision when the Congress starts coupling or tying together both obligations and rewards.

Governor HERNANDEZ-COLON. I do not see the problem. Perhaps, with an example I could see it better.

Senator McCLURE. Well, let us just assume some statute that you find does not really fit what you want done with respect to Commonwealth. And so, on behalf of Puerto Rico, you, in effect exercise the earlier option which you also suggest, that you certify to the Congress that it is inconsistent with your equitable participation, or whatever term you choose out of Subpart 3, and say "we do not want that."

And the Congress, looking at that, said okay, if they do not want that they do not get this one either; that being one of the benefits you want, whether it be an entitlement program or otherwise. And I would assume that you are suggesting that the entitlement programs are programs that are tied to rights of citizenship and therefore could not be denied no matter what Congress decided they wished to do.

Governor HERNANDEZ-COLON. That is right. We're excluding them from this rule totally. Now, with regards to the problem that you are presenting. The Congress would not have to enter into this type of negotiation with us, because if it felt that there was overriding national interest that the law should apply to Puerto Rico, then, all it would have to do is find that and conclude that, and that would be end of the story.

Senator MCCLURE. Is that finding by the Congress reviewable in the court against the statutory principles?

Governor HERNANDEZ-COLON. No, I do not believe it is.

Senator MCCLURE. You outlined a while ago that there were two parallel principle provisions. One that was in the courts and the other which is not.

Governor HERNANDEZ-COLON. Yes, but the course of action where there could be a judicial review would never be one where the Congress has made a specific finding that a law should be applicable to Puerto Rico because there is an overriding national interest.

Senator MCCLURE. Your understanding of your proposal is that that finding by the Congress is not reviewable by the court or by the Executive?

Governor HERNANDEZ-COLON. That is correct.

The CHAIRMAN. That is a finding by the Congress?

Governor HERNANDEZ-COLON. That is correct.

The CHAIRMAN. But you have this provision over here with respect to federal actions. All departments and agencies of the United States shall be guided by the policy stated in Subpart 3 when carrying out their duties.

Every such department or agency shall, before taking any major federal action applicable in Puerto Rico, separately evaluate the consistency of such action with the policy, and state in a document accompanying that major federal action the extent, nature and result of its consideration.

Now, that would be the standard for court reviewability?

Governor HERNANDEZ-COLON. With regards to the actions of departments and agencies in administering laws, yes. They would be subject to judicial review. The process whereby we take exception to something, the agency then comes back and says it should apply. And, then, that would go up to judicial review, that is provided for here.

I think that would be the case even if we did not provide it here.

The CHAIRMAN. Well, suppose an agency was going to give, or deny, a permit for burning high sulfur coal under the Clean Air Act. Then, couldn't you go to court and say that that does not maximize autonomy in Puerto Rico, we would like to decide the Clear Air Act ourselves, and, therefore, throw that out as a major federal action?

Governor **Hernandez-Colon**. I do not think that that would be decided just on the mere fact that we want to maximize autonomy. But, if the proper demographic and ecological and economic conditions, and the policy to foster social and economic growth are not taken into consideration, then a rule of that nature, could be found inconsistent.

The **Chairman**. Well, this is in effect here an autonomous body, which I read to be a sovereign body, and the purpose of the policy of the United States is to attain maximum cultural and political autonomy. Maximum political autonomy.

So the legislature of Puerto Rico passes a statute that says we hereby have control over air and water pollution.

Governor **Hernandez-Colon**. That is where we say the maximum political autonomy compatible with permanent union with the United States.

The **Chairman**. It is within permanent union.

Governor **Hernandez-Colon**. Essentially, it is the same. What we mean is that there is a limit to the autonomy that Puerto Rico would have, because it is working together with the Federal Government. And there is a federal sphere of action and there is a Puerto Rican's sphere of action.

The **Chairman**. I know. But I think what you are saying in this statute is that the Puerto Rican sphere of acton is sovereign, or "autonomous". At least, the courts could surely construe it that way.

Governor **Hernandez-Colon**. We say that within our sphere, but that does not mean that it is a sphere of action that excludes the sphere of action of the Federal Government, which has its own sphere of action.

And, therefore, in a matter such as environmental statute, posed by the chairman at this moment, the question would not be whether it is a question of autonomy or not. It would be a question of how that statute affects the particular ecological, and geographic, and demographic, and economic conditions of Puerto Rico.

Senator **McClure**. Would it be your view that if, from your perspective, the law had application only within Puerto Rico, you would have the right to make a determination? But if it had a broader impact than just Puerto Rico, that would be the federal sphere? Let me relate that to an environmental question: As an example, if the environmental effects of that statute were felt only within the boundaries of Puerto Rico, you would have the autonomy which you seek under this. But, if the environmental effects were broader than that contained within Puerto Rico, the United States Government would have primacy?

Governor **Hernandez-Colon**. That would be a clear case of federal invasion of the Puerto Rican sphere.

Senator **McClure**. As you view your proposal. I am not arguing for or against it, I merely want to understand your proposal.

Governor **Hernandez-Colon**. That is correct.

Senator **McClure**. Can I ask you a different question, ask the same question in a different way?

The same positions as economic excuse me, I want to make sure that I use the right term to attain maximum cultural and political autonomy within permanent union, I want to be sure I get the whole context of that statement.

Let us take the example of language. And, again, not to argue for or against any specific provision. I am trying to understand your proposal.

Assume that the Congress of the United States decided that you ought to be teaching in English. You touched on that subject earlier, that it should be the language of instruction. And you in Puerto Rico, decided no, you would teach English as a mandated course, leading to a bilingualism, but Spanish would be the language of instruction.

And the Congress said no, you must use English. I assume you would reject that as an invasion of your sphere.

Governor HERNANDEZ-COLON. That is correct.

Senator MCCLURE. In the second example that I gave and again, I do not argue for this because I do not like what the Congress does sometimes in this case. The Congress might withhold benefits if you do not comply; they say you do not get any education benefits until you teach in English.

Governor HERNANDEZ-COLON. We would have to make our choice.

Senator MCCLURE. Then you would make a choice. Now, on the basis of your own choice, no matter how onerous that might have been, no matter how onerous a manner in which it might have been framed.

Governor HERNANDEZ-COLON. That is right.

The CHAIRMAN. I am concerned about what the problem is here, and would like to solve it. I was just thinking about Culebra. Now Culebra would not be solved by this language, would it? Because that involves national defense.

It might have been an unwise action, and an inappropriate action, but it involves national defense and that would have been specifically exempted from this, would it not?

Governor HERNANDEZ-COLON. From the laws. That is from the applicability of laws. However, not from federal action.

The CHAIRMAN. That would be defense or national security. So Culebra would have been exempted from that anyway.

Can you give me another example?

Governor HERNANDEZ-COLON. I could give you another one, but I think that it would have been included because this paragraph applies to all legislation. This paragraph E of the impact statement. It does not make the exemption of defense, national security, or foreign relations.

It is an impact of any federal action, so it would apply. But I could——

The CHAIRMAN. I see, and probably you might be exempt under four. Even though it is national security you could argue that it would require uniform applicability throughtout the United States.

Governor, I do not know how the Committee is going to react to this, but it just seems to me that this would be productive of endless litigation. You have got everything from, Culebra maybe was the wrong thing to do, but how about Vieques?

I guess before they could shell Vieques, they would have a lawsuit. Now I do not know what the present status of any litigation or objections——

Governor HERNANDEZ-COLON. There is no litigation pending on Vieques right now. And the way these things are currently being worked out is through consultation, and that has worked out well.

The CHAIRMAN. Which we certainly ought to encourage. If there is a way to encourage that. In other words, what we need to do, it seems to me, is identify what the problem is as concisely as we can and then get a remedy narrowly tailored to deal with that in the least intrusive sort of way.

For example, if Mr. Fuster is able to get the House to respond and make up its mind what to do about matters in legislation, we should not create this whole matrix of federal laws, and rules, and impact statements, dealing with legislation if it is really basically a non-problem.

With respect to major federal actions, we do not want to have those questioned by a lawsuit. We are bound up in lawsuits enough as it is, too much, as it is right now. And I would expect that in some respects you would be creating a monster. I mean, I went out and inspected that great dam site that you have there, hydroelectric dam site in Puerto Rico.

I do not think you want a group of people filing a lawsuit that prevents you from filling that dam and getting the electricity from it when it is complete.

Governor HERNANDEZ-COLON. But I do want to say that in the errata we have limited any possible action through action taken by the Puerto Rican Government. It does not allow for other groups, private groups, to come in and question the federal action.

Senator MCCLURE. Is that contained in your draft?

Governor HERNANDEZ-COLON. In the errata that we submitted yesterday.

The CHAIRMAN. The Resident Commissioner would like to say something.

Mr. FUSTER. Mr. Chairman, and Senator McClure, and Senator Bradley, the problem that we are dealing with is a very real problem, even though it does not occur on an ordinary basis or a routine basis.

It is a very big problem, particularly when you are dealing with the Executive. Let me give you, very briefly, two or three examples without going into the details of them.

There was a time, for example, when the building codes set up by the respective federal agencies required Puerto Rico to use a certain kind of cement because only that kind of cement was adequate for cold weather.

Now, you might think it would be easy to get rid of that requirement, but it took a long time to persuade them that there was no way it was going to snow it Puerto Rico. And, therefore, we should be able to have some latitude in terms of setting the quality of that cement. That is an example that we can easily document. That is one example.

A second example. There is a report which, I am sure, some members of your staff know because, I think, you, Mr. Chairman, were the one who requested it. It is a report by OTA, the Office of

Technology Assessment, on the use of renewable resources in insular jurisdictions, including the State of Hawaii, not merely limited to places like Puerto Rico.

And, one of the things that that report concludes, which, I think, has a very decisive impact, is that often federal agencies, in making decisions as to renewable resources, climatalogical conditions, use what they call bioassays that work in temperate climates, but not in tropical climates like the one in Hawaii, Puerto Rico, the Virgin Islands, Samoa, and what have you.

This has resulted in a lack of efficient use by the insular jurisdictions of the renewable resources. Now this occurs as OTA, which is a very objective body, as you know, not because we have not tried to persuade the respective administrative agencies of the need to do better bioassays.

But, we do not have any standards by which to compel them to do it, which we are pursuing.

Let me give you one final example. This is something that we worked very hard a couple of years ago. It has to do with importation of Puerto Rican mangoes into the mainland.

These mangoes, according to the regulation by the Department of Agriculture, have to be treated in certain ways to make sure that certain pests are not adhered to the skin of the mangoes, which we had been doing traditionally, according to existing procedures.

Then, the pesticide we had been using for that was declared dangerous for the workers by EPA, not by Agriculture. The Agriculture Department had no problems with that particular pesticide. It was EPA. So, all of a sudden, the crops of Puerto Rican mangoes that had already been sold to mainland markets, could not be imported into the States.

But the Mexican mangoes and the Dominican mangoes could be imported because Agriculture had no problem with the pesticide. EPA had it. There was no way we could solve our problem. It was an interagency conflict that tied up a very important part of our economy.

And, the curious thing is that since the one who controlled the entrance to the market was Agriculture, and they had no problems with the pesticide, EPA had it as a local problem for workers. The Dominican mangoes and the Mexican mangoes were coming in, and not the Puerto Rican mangoes, even though we are part of the United States.

It is mindboggling the things like that happen sometimes. Again, when we went to deal with the respective agencies, they kept saying, that is not our problem, go to the other agency. And, when we pleaded with them, they say, well, you know, my job here is to make sure that pesticides are not used, I have no responsibility for worrying about Puerto Rico's economic development, or worrying about Puerto Rico's trade with the United States.

There was no referrable standard that we could use to solve the problem. I can assure that if we sit down we will come up with a lot more examples. This is not a problem that we invited; this is a problem that exists.

And, it really has nothing to do with changing the spheres of sovereignty that we believe exist, a federal sphere and a local sphere. It simply has to do with how we make the relationship more harmonious in areas in which reasonable people, if a standard exists, would agree that it is a good standard and it should be made applicable.

Senator McCLURE. May I comment on that? Because I really believe what you are talking about here is not a question of your status, but a question of how do you make this Federal Government of ours work? And it does not work very well. And I can tell you, I will match you example for example on things that affect Idaho.

We do not agree with EPA, or we don't agree with Ag, or we do not agree with the Department of Labor, or something else, and we need resolutions, a mechanism, by which we can solve those problems. It seems to me that that is a different question than that of status, unless what you seek to do is solve your problem of dealing with the Federal Government by exempting yourself from it.

Governor HERNANDEZ-COLON. This is very important, Senator, this is very important. Because, the means that people in Idaho have for dealing with this problem is through their elected representatives.

Senator McCLURE. I understand that. I have no more success than yours does.

Governor HERNANDEZ-COLON. That is where we need the special mechanisms, given the fact that we have a different——

Senator McCLURE. You see, I do not vote for EPA regulations either.

The CHAIRMAN. Let me give you an idea here. I am just thinking as I speak, which is always dangerous. But, let me give you an idea.

Suppose we adopted a standard that would say essentially this, unless required by some national policy, some national interest, no department or agency shall adopt any rule or take any action which is inconsistent with Puerto Rico's, let's say, economy, culture—we could expand to those considerations.

And, that, upon the request of the Governor, the agency shall make findings as to that standard, and, if you are not then satisfied with it, then allow you to go to court. Maybe, with the same standard that we use in the Administrative Procedures Act, which is the abuse of discretion. In other words, we do not want to have all these lawsuits and all these environmental impact statements.

But, if you had one of these things that says your building codes require cement that is meant for northern climates, and you write them and say, was not this a mistake, and they say, no, then you could ask them to make that finding. They would then have to make a finding saying that it is required by the national interest, which would be impossible for them to do. And you would be able to show it was inconsistent with Puerto Rico's interest.

And, if they persisted in it, probably with that kind of provision, they would voluntarily amend their law, amend their regulation, or not take the federal action.

Governor HERNANDEZ-COLON. I think, essentially, that goes in the right direction. Offhand, in the same vein, I would say that would tend to cover our problem.

The CHAIRMAN. Why do not we see if we cannot draw something that incorporates that idea because you ought to have a right to undo inappropriate federal action that is inconsistent with the interests of Puerto Rico, unless it is required by some uniform national law that has some reason behind it. And, if the bureaucrats will not do it voluntarily, then you ought to have a right to go to court.

But, I think the standard ought to be the Administrative Procedures Act standard and not another standard. It is a little tougher standard to me, but one that it would be likely, I think, to be productive.

Senator McClure. Mr. Chairman, might I comment on that?

The Chairman. Yes, please do.

Senator McClure. I agree with the tendency that the Chairman has suggested here, of finding a solution to the problem that does not open us up to endless litigation. I do not know who drafted the provision, maybe the Puerto Rican Bar Association. But, I am almost positive that what you would set in motion under the existing draft would be the kind of paralysis of decision-making that we have seen under so many of the current laws of the United States.

We are approaching an absolute crisis condition in the public land management because the process does not work anymore. One of the issues which you addressed, but I have not yet seen—you say you did in the errata sheets that you filed with the committee yesterday—but I have not seen them yet, deals with the question of who may bring the suit, who may challenge the action.

Because I think standing is one of the very important questions that has to do with the current breakdown of the process of decision-making with public lands. The court, some years ago, decided anyone who was a citizen or taxpayer in the United States had sufficient standing to question federal actions.

Well, that means one person in Puerto Rico who did not like the application of a law would have standing to bring suit. And, I understand you do not intend to suggest that.

Governor Hernandez-Colon. Not at all.

Senator McClure. And, it would be confined, if I understand your suggestion, to an official act of the Puerto Rican Government.

Governor Hernandez-Colon. Yes. The exact language would read like this: Any administrative or judicial review of any agency determination pursuant to this subsection may be brought only by the Commonwealth of Puerto Rico by a complaint filed by its Governor, and federal courts shall have no jurisidiction to entertain any action brought by any other party challenging agency compliance with this subsection.

The Chairman. I would think that would be the appropriate kind of language. Puerto Rican state courts would have no jurisdiction either?

Governor Hernandez-Colon. No.

The Chairman. I think we could work that out with an APA standard.

Senator McClure. I would want to go one step further, also, to look at whether or not a Writ of Mandamus might lie against the Puerto Rican Government to raise such a question. And, I do not mean to be a nitpicker, I just want to make certain that we know what we are doing.

Governor **HERNANDEZ-COLON**. I have no problem with excluding it.

The **CHAIRMAN**. Well, this would be a job for the drafters. I think we have some language, I mean, an idea, but I hope we can implement it with some language.

I think we were on aviation when we left to go vote.

The Commerce Committee really needs to resolve that question. I guess we probably better throw that ball to them.

Senator **MCCLURE**. I think that the Commerce Committee probably will want to reflect on that provision and give us their advice. I would suggest that we defer to them on that subject.

The **CHAIRMAN**. Alright. Now, on international trade, what are the types of products that Puerto Rico wants to levy a separate tariff on? I know the coffee and, I like Puerto Rico's coffee very much and I do not know why it needs protection. I think it is very good without protection. But, I understand that. Do you have any other kind of products that you have in mind?

Governor **HERNANDEZ-COLON**. Yes, beef, pork, frozen shrimp, certain vegetables and fruits and other products that can be locally produced, agricultural products.

The **CHAIRMAN**. We are talking about the ability to put a tariff on them.

Senator **MCCLURE**. You're talking about the tariffs against foreign products, not U.S.?

Governor **HERNANDEZ-COLON**. That is correct.

The **CHAIRMAN**. But, things that are transhipped, foreign things that are transhipped, you would, of course, put the tariff on.

Governor **HERNANDEZ-COLON**. Of course.

The **CHAIRMAN**. And, anything produced in the United States would be foreign, I mean, would not be foreign.

Governor **HERNANDEZ-COLON**. Would not be.

The **CHAIRMAN**. Now, how about other territories, the Virgin Islands, etc.?

Governor **HERNANDEZ-COLON**. The same as the United States.

The **CHAIRMAN**. And you would allow that the Gatt Agreement, or any federally-negotiated tariff system, would take precedence over this power, if it was inconsistent?

Governor **HERNANDEZ-COLON**. We would function within the scope allowed to us by the Gatt Agreement. That is, the U.S. would take up whatever space it believes it should take, then, what would be left would be what we could occupy.

The **CHAIRMAN**. This is largely to protect emerging industries?

Governor **HERNANDEZ-COLON**. Mostly, our farmers.

The **CHAIRMAN**. As opposed to a revenue measure?

Governor **HERNANDEZ-COLON**. Oh, yes. We do not intend it as a revenue measure.

The **CHAIRMAN**. I am sure that the Finance Committee will look at that one as well. But, perhaps, we will give them suggested language and that will probably spur them into quicker action.

Now, with respect to the maritime——

Senator **MCCLURE**. May I ask two questions on the foreign trade issue? I will not belabor the subject because I am sure that we will have a lot of discussion with other entities in the Congress before we resolve that issue.

If I understand, your proposal would recognize that the United States is today involved in negotiations trying to free international trade from unnecessary restriction. And to the extent we have generalized agreements which would affect the United States and its possessions, those provisions negotiated in international trade would be binding upon Puerto Rico as well.

Governor HERNANDEZ-COLON. That would be the case.

Senator McCLURE. I would assume also that whatever we are able to finalize between the Administration and the Congress and other countries with respect to the Caribbean Basin initiative would also override the independent authority of Puerto Rico.

Governor HERNANDEZ-COLON. Yes, it would. It just would not extend to them. It would not be a question of overriding it.

Senator McCLURE. I would also underscore that you ought to have the right to prevent circumvention of such rules by transshipment, or anything else of that nature, if the Congress of the United States, the Federal Government, did not do so on your behalf.

Governor HERNANDEZ-COLON. Yes.

The CHAIRMAN. With respect to maritime, I understand you want to take away the jurisdiction of the Maritime Commission.

Governor HERNANDEZ-COLON. Only as regards to rates.

The CHAIRMAN. Could you explain the problem that you have?

Governor HERNANDEZ-COLON. The problem is that the Commission has not functioned well as a mechanism for holding freight rates down. In the case of Puerto Rico, the practice has been that as rate increases are requested, they are, in fact, granted.

And, there hardly has been any case where they have been denied. And, we have had rate increases even of 10 percent. Now, 90 percent of our exports go to the United States; 65 percent of our imports come from United States, and they come in these ships.

So that we are subject to the Jones Act, we must bear an undue burden because of the Jones Act regarding the cost of the transportation of our imports and our exports. We realize the overriding national interest.

The CHAIRMAN. Would that give Puerto Rico the right to discriminate between carriers? Particularly between Puerto Rican-owned carrier and non-private carrier?

Governor HERNANDEZ-COLON. No, no, no.

The CHAIRMAN. How would they be protected?

Governor HERNANDEZ-COLON. It would continue. The Jones Act provision, which would hold us to shipping in American bottoms, would just continue.

The CHAIRMAN. This would be another problem. It would be a question of discriminatory rates.

Governor HERNANDEZ-COLON. No, it would be uniformly, they would be uniformly applied. You see, to our economy, the question of maritime rates, it is an island economy, it is absolutely crucial. We have had to even go so far as to get into the shipping business in order to have an affect on the level of rates in Puerto Rico.

If we had this authority, it would not even be necessary to do that. Because we would hold them as low as possible. Evidently, you know, we need the transportation. But, we would have an efficient control.

The CHAIRMAN. This is another question of jurisdiction with the Commerce Committee, and I certainly am not an expert on these maritime rates.

I know something about the Jones Act and American bottoms, but beyond that, I do not know much, and I think we will just have to give that one, as well, to the Commerce Committee.

Now, with respect to fisheries, you know, tuna is a very controversial species, and I think we would be getting into a peck of trouble, to the extent we authorize Puerto Rico to license foreign tuna vessels, inconsistent with U.S. policy.

Is regulation of tuna one of the primary objectives of this proposal?

Governor HERNANDEZ-COLON. It is not one of the primary objectives, but there is some tuna fishing going on.

Now, we have here a provision that says that we shall take no action which would purport to restrict or charge fees to vessels of the United States for the right to fish for highly migratory species of fish within any fishing jurisdiction.

The CHAIRMAN. The problem is of the licensing of foreigners, not whether you let Americans, but licensing of foreigners.

Governor HERNANDEZ-COLON. Well, we are not interested in licensing foreigners. We have a tuna industry in Puerto Rico, and we may be interested in licensing our own tuna companies, but we do not contemplate anything beyond that right now.

The CHAIRMAN. Well, I will tell you, tuna, being as controversial a species as it is, we would probably be better off not to buy that fight—just let that continue to be unregulated. But in any event, that is also in the Commerce Committee.

I would urge you to think about the question of tuna, and how controversial it is. I do not want to have this great big bill being stalled by a small tuna provision.

Governor HERNANDEZ-COLON. Well, we do not want that. Neither do we.

The CHAIRMAN. It seems that under the fisheries law you want to get jurisdiction over the entire EEZ. Is that correct?

Governor HERNANDEZ-COLON. Yes.

The CHAIRMAN. Now, what is the problem that you want to solve there?

Governor HERNANDEZ-COLON. Well, we would like to use for the purpose of Puerto Rico, given the fact that we are an island, whatever economic values or assets, living or non-living, lie around our island. That would be the intent.

The CHAIRMAN. Fishing, principally?

Governor HERNANDEZ-COLON. Fishing, principally.

The CHAIRMAN. All right. Now, with respect to intellectual property, what is the nature of the problem which this section is designed to address?

Governor HERNANDEZ-COLON. Well, it is a tool for economic development in the information age.

As we mentioned before, our per capita is still one-third that of the national average. Our unemployment rate is almost three times that of the United States. So we need the tools, we need the tools to stimulate economic development in Puerto Rico.

And what we are seeking here is authority to promote intellectual, creative activity in Puerto Rico in the area of electronic chips and industrial design, by providing legal protection to such intellectual pursuits.

The **Chairman**. What kind of products, what kind of property are we talking about?

Governor **Hernandez-Colon**. We are talking about the design of any industrial product.

The **Chairman**. Who are the people that would be interested in this sort of thing? It looks like it would be the kind of thing that if anybody wanted to design a particular kind of product, not covered otherwise by the copyright laws, they would move to Puerto Rico to do so.

You must have in mind something. I mean this had to have come from somewhere. What is involved here?

Governor **Hernandez-Colon**. What is involved is an additional incentive to come to Puerto Rico. It is not directed to any particular industrial product.

It just takes an area which is not adequately covered by federal law today where we could give protection through our copyright laws, and thereby induce a person that intends to develop such an industrial design of whatever product it may be—an electronic product, a chair, an automobile, whatever. To develop that design in Puerto Rico and gain this additional protection, or begin production of the product in Puerto Rico.

The **Chairman**. Well, frankly, when you get into a whole new area like this, it is a major undertaking. Major legislative undertaking. And unless there is some real reason that we can see some problem, or some opportunity. I mean, simply to state vaguely, well, it might be nice, I think is not reason enough for us to get into it.

Governor **Hernandez-Colon**. In that sense, we should and can produce an economic paper to submit to the committee. Because what this meant to do is to give an additional tool to deal with the high unemployment problem.

The **Chairman**. I would like to deal with the high unemployment, but how does this deal with it? What kind of products? There is a gray area, I think, in the copyright law that deals with what is a useful product.

And somebody, some smart lawyer has an idea that you can interpret some area and get some advantage. We want to know what that is. We do not want—we are not going to just legislate in the dark, with ambiguities.

Governor **Hernandez-Colon**. We certainly do not want you to do that.

We would submit a paper which you can evaluate.

The **Chairman**. We would invite that.

The consolidation of grants, first of all, it points out four programs which would be made fully applicable. While I do have great sympathy for that, the cost, as I understand it, would be about $2 billion a year. And, I think, would violate the principle of neutrality of budgets.

Governor **Hernandez-Colon**. The consolidation of grants would not involve any additional funds at all.

The CHAIRMAN. All right. Well, first of all, dealing with that question of the four programs.

Governor HERNANDEZ-COLON. That is another section.

The CHAIRMAN. I think you have a very strong argument there, but I think it is an argument that ought to be made program by program, and outside of this bill. We would like to keep this bill—I mean, it is going to be big enough and huge enough, just considering the things that must go in it. And I think those are battles that we ought to fight another day on some other turf in another bill.

Governor HERNANDEZ-COLON. How would you deal with that matter for statehood? Make the same decision as to statehood, but rather on—well, perhaps on the same basis.

The CHAIRMAN. Well, statehood does not have a relatively permanent section 936. In statehood you must pay taxes.

Governor HERNANDEZ-COLON. That is correct.

The CHAIRMAN. There are pluses and minuses in each status.

Governor HERNANDEZ-COLON. Yes. But the question of revenue neutrality arises in the statehood bill the same way it arises here with regard to these programs.

The CHAIRMAN. Now, under statehood, let us say you began to pay taxes immediately and began to get full programs immediately. I do not know what the tradeoff would be in terms of dollars, but at least in terms of principle it would be a tradeoff.

And I am not suggesting that either the programs be made applicable immediately, or that the taxes be made payable immediately. Those are issues we have yet to address with respect to statehood.

But what you are proposing, is make the programs fully applicable, and continue to pay no taxes and keep 936.

Governor HERNANDEZ-COLON. Over a period of years——

The CHAIRMAN. We have a vote, so I have got to—I will go vote and come right back.

[Recess.]

The CHAIRMAN. Getting back to the question of federal programs, I understand that this is only a policy statement as to what should be. Policy statements do have a way of finding themselves into a court order sometimes, and the revised figure is about $850 million. I said $2 billion earlier. I think that cost would be about $850 million, which, as I say, I think would be beyond our ability to do in this bill.

Governor HERNANDEZ-COLON. It is a very important part of the problem for us, Mr. Chairman. And we would like to address it in principle. We have no problems with dealing with the revenue neutrality problem as to the phasing-in of the attendant principle that should be observed.

But, however, we do believe that there is a serious problem here with these programs. It is a problem that not only exists with regard to the programs themselves, but it is a status problem, because the policy behind capping these programs comes from the status that Puerto Rico has.

And the misguided principle that, because under that status, we do not pay federal taxes, and that we have 936. That, therefore, these programs should be capped.

I think this committee should address this problem of policy, because it is a problem that goes to the heart of the situation that affects the rights of thousands of American citizens in Puerto Rico.

The CHAIRMAN. As I recall, though, in 1973 when we had the ad hoc status commission with Muñoz Marin, did he not at that time, talk about contributory payments as an offset to making federal programs fully applicable?

Governor HERNANDEZ-COLON. He had that solution, he had that solution. Certainly, the fact that we do not pay taxes now, and that there is 936, responds to a special situation in Puerto Rico, which is what I said before. That our per capita is one-third that of the per capita national average. That our unemployment is three times as great.

Now, if we were anywhere near the national average on our per capita, we would not pretend to have a situation where we have 936, and we are not paying taxes.

The CHAIRMAN. Perhaps we can state that in here as a goal that Congress should reach as soon as possible.

I have every sympathy in the world with what you are saying.

Governor HERNANDEZ-COLON. We are dealing with programs affecting citizens that do not pay taxes anywhere.

The CHAIRMAN. As I understand it, there could be—wrongly stated language could trigger court action, which——

Governor HERNANDEZ-COLON. We have no problem with language that would properly address the problem that we are facing here with the right principle.

The CHAIRMAN. All right. Perhaps we can give, get some language that will state that principle as a goal, and not without intimating that that should be immediately.

Now, with respect to protection of workers, could you be more specific as to the local matters over which you think the National Labor Relations Board should not have jurisdiction?

Governor HERNANDEZ-COLON. The National Labor Relations Board—its jurisdiction in Puerto Rico over labor-management disputes and the organization of workers to the local Labor Relations Board, so it would be a matter of a delegation, rather than a matter of jurisdiction.

The CHAIRMAN. Well, can you tell me what kind of situations?

Governor HERNANDEZ-COLON. Any company that is today engaged in interstate commerce, if it is involved in a labor dispute, or if there is going to be—if a union is going to be organized for that company, would fall under the jurisdiction of the NLRB.

This purports to delegate NLRB jurisdiction to the Puerto Rico Labor Relations Board, for the Puerto Rico Labor Relations Board to implement the jurisdiction of the NLRB not to change the Taft-Hartley Act, or the laws, but to change the body that implements.

The CHAIRMAN. The law would still be the same?

Governor HERNANDEZ-COLON. The law would still be the same. Yes.

The CHAIRMAN. And we would have jurisdiction in what courts?

Governor HERNANDEZ-COLON. The appeals would then go to the first circuit.

The CHAIRMAN. For federal court?

Governor HERNANDEZ-COLON. Yes.

The CHAIRMAN. Has organized labor taken a look at this?

Governor HERNANDEZ-COLON. Not officially. The contacts with labor leaders in Puerto Rico that we have had indicate to us that they would support this provision, but there is not a resolution of any of the AFL-CIO organizations in favor of this.

However, the people in them that we have contacted, have given us positive responses.

The CHAIRMAN. I understand that Senator Kennedy's office has said that organized labor would oppose this provision.

I think we ought to, in matters like this, which could be highly controversial, and could put the whole proposition in jeopardy, seems to me could be handled outside the four corners of this legislation.

Governor HERNANDEZ-COLON. If that were to be the case regarding this provision, we would have no problem.

The CHAIRMAN. Let us see if we can—I am just not an expert on this NLRB, and I do not know whether anyone on the staff is an expert on it. But we may just be buying trouble, if you are not going to change the rules, if it is just a question of venue.

Governor HERNANDEZ-COLON. We are, indeed, surprised that there would be objections from organized labor to this.

The CHAIRMAN. Well, it is hearsay what I have just told you, so we will investigate that further.

On Section 13, dealing with federal appointments, the reach of the proposed language of subpart 13 appears very broad.

Do you intend to cover by this, both the highest ranking federal officer of any agency and department, as well as any other federal, civil, or military officials serving in Puerto Rico whose appointment has been approved by the Senate? Is that correct?

Governor HERNANDEZ-COLON. We do not intend to cover military officials. Defense would be excluded. Coast Guard would be excluded. And possibly the F.B.I. should be excluded.

The CHAIRMAN. Is that in the errata, your exclusions?

Governor HERNANDEZ-COLON. No, it is not. It is not.

The CHAIRMAN. It would purport to be the Commander at Roosevelt Roads?

Governor HERNANDEZ-COLON. We do not intend to cover that case. We would exclude all Defense personnel, Coast Guard personnel, and possibly F.B.I.

The CHAIRMAN. Corps of Engineers. I would say that you would want to exclude the Corps of Engineers as well.

Governor HERNANDEZ-COLON. Yes. We would exclude the Corps of Engineers.

The CHAIRMAN. For one thing, they are doing a good job down there, and it is definitely federal standards, and federal control, spending federal money. So you would clearly want that.

What if your highest official is, say, a GS-6, a relatively lower ranking?

Governor HERNANDEZ-COLON. No, No. This would be the highest official in charge of a federal agency in Puerto Rico, whether it is Customs, whether it is the Park Service, the Forest Service, whatever the grade may be, would not make the difference.

The difference would be made by the fact that in the island, this is the highest federal official in an agency.

The CHAIRMAN. Well, this could really be productive of some problems. I mean, how would you make up a list of Park Service directors, for example. And suppose the president did not want one of those Park Service directors that you had in mind. I mean, you would not have knowledge of the people of appropriate rank in the Park Service.

I mean they shift them in from around the country, and it seems to me they do a very good job, both in Puerto Rico and the Virgin Islands, and elsewhere. They do not hold those jobs for life. They are shifted frequently.

How would you know about whether someone you know in Puerto Rico would make a better park director than someone who is presently a director in another area?

It seems to me an input on that is appropriate. But to say that you have to appoint someone from a list submitted by you. I mean, you just would not know, necessarily, that—you would not know the appropriate people, whether it be in the Park Service, or in the INS, or whatever the federal agency was.

Governor HERNANDEZ-COLON. But a procedure could be set up so that the people who qualify for the position are made known to us, and then we could look at that list and then make a determination from that. And then, let that go up to the person.

The CHAIRMAN. Well, perhaps we could say something to the effect that the higest ranking federal officer, et cetera, shall be appointed in consultation with the governor of Puerto Rico. Shall be appointed only after prior consultation with—I mean, I think, first of all you are dealing with presidential power, and secondly, whether it is a constitutional presidential power that we could not limit, or whether it is one that we could limit and should not.

It seems to me that what you ought to have is a prior consultation. And if you have that requirement in the law, the prior consultation, then I think that ought to get you what you need. It would sensitize the administration to consult with you before the appointment.

Governor HERNANDEZ-COLON. It would not be as effective a mechanism as we have. But if the consultation was not limited to a person who has been already selected, rather a consultation while the process is still open to alternatives, then we could have our input there, it would be more effective than the mere consultation.

The CHAIRMAN. I would suggest that we say, only after prior consultation, and in report language, state that is our intent that this be prior to the time the decision is made and not simply because it would violate the principle of consultation, if they have already made the decision, and they just tell you about it.

Now, I mean, that would really be no consultation at all, and we could make that clear in the language.

Consider that approach, if you would, and let us hear from you on that, because I just think this would be mischievous if you said the President could appoint only from a list of nominees which you submitted. You simply would not know, or would not have knowledge of people around the country who might be highly qualified.

The question of a resident commissioner in the Senate can provide some difficulty, politically here. You know, the Senate is, does represent states. And I have heard senators say that to have a resident commissioner would not work in the Senate, since under a commonwealth, Puerto Rico would not be a state.

I am not speaking for myself. I just alert you in advance that this could be a troublesome matter.

The proposed language does not explicitly say that the resident commissioner shall be a non-voting delegate. You propose the same situation that we have with the Resident Commissioner in the House?

Governor HERNANDEZ-COLON. We understand that it is absolutely necessary in order to make it constitutional.

The CHAIRMAN. Well, we will deal with that. Is it important that he be elected and not appointed, for example?

Governor HERNANDEZ-COLON. We would prefer that the resident commissioner in the Senate should be elected. If it were a question between having one and having an appointed one, then we would, of course, accept the appointed one.

The CHAIRMAN. Now, with respect to the judiciary and federal courts, your proposal prohibits federal district court review of any unconstrued Puerto Rico statutes, regulation, or undecided point of substantive Puerto Rico non-statutory law, without first giving Puerto Rico, the Puerto Rican Supreme Court, the opportunity to act.

An undecided point of substantive Puerto Rican non-statutory law, I think would be a very vague standard. First of all, what is substantive and what is an undecided point? What is non-statutory law? I would think that would be very difficult to construe.

How would this work in practice? Many times you do not know until a case is well along, what point the judge is going to decide a case on. So how would it, as a practical matter, work?

This simply says that the district court shall not undertake to construe a theretofore unconstrued Puerto Rican statute. It does not deprive the court of jurisdiction. It might simply prevent it from deciding that case.

Governor HERNANDEZ-COLON. Mr. Chairman, I am sorry, but I was consulting on the point, and I did not hear.

The CHAIRMAN. Yes. The language says the district court shall not undertake to construe a theretofore unconstrued Puerto Rican statute or regulation, or decide a theretofore undecided point of substantive Puerto Rican non-statutory law, without having given the Supreme Court of Puerto Rico the opportunity to construe such statute or regulation, or rule upon such point of Puerto Rican law.

I mean, I just do not see how that would work. I mean, you have got an on-going case, and you have got a lot of rules of law. The court still has jurisdiction; cannot decline its own jurisdiction, I would think, but might not be able to decide a case on the most appropriate point.

Governor HERNANDEZ-COLON. Well, at that point, at the point that the federal judge found that he would have to construe a Puerto Rican statute, then he would then proceed to certify that point to the Supreme Court of Puerto Rico, who would then make a ruling on that interpretation, and send it back to federal court.

The CHAIRMAN. Well, this does not say that it does not provide for any certification.

Governor **Hernandez-Colon**. But it exists. The mechanism exists under the federal rules.

The **Chairman**. They have that power now, I understand, that it is discretionary. Are they not exercising that discretion?

Governor **Hernandez-Colon**. Mr. Chairman?

The **Chairman**. I say, is this a problem that they are not exercising that discretion and they should be?

Governor **Hernandez-Colon**. I would say that is the case with the district court in Puerto Rico. Even the circuit court exercises its discretion and certifies to the Supreme Court of Puerto Rico, adequately. At the present moment, I would say that they are not exercising their discretion adequately. And this would sort of be more mandatory language.

Actually, what this in effect does, is, put into statutory form what is case law and jurisprudential principle.

The **Chairman**. Well, it seems to me this could be very mischievous. It could—I mean, say you have a district court judgment in which they construe a point of law? Then, I suppose, that would give you the right to appeal that judgment.

You have the right to appeal, anyway, but it would give you grounds for a reversal—that they construed some point of Puerto Rican law, and it would make litigation endless. Then you would have to remand back to the district court and they would have to certify and come back.

Governor **Hernandez-Colon**. That exists right now. That is the case.

The **Chairman**. Well, it is discretionary now. And it seems to me the better thing to do would be to have some hortatory language urging the district court to certify questions, where possible.

Governor **Hernandez-Colon**. Perhaps that language could be worked out by staff.

The **Chairman**. Because I think, I mean, sometimes you have got many, many questions involved. Sometimes you have many questions involved, and sometimes it might not be a principle issue and it might be a subsidiary issue, or there might be three grounds for deciding a case, one of which involves an undecided point.

And, you know, what is undecided and what is substantive, or what is unconstrued? You know, what is a point and a sub-point? I think this could be more troublesome than productive.

Governor **Hernandez-Colon**. The Commissioner would like to respond.

Mr. **Fuster**. Senator Johnston, I taught federal jurisdiction for many, many years in Puerto Rico, and there is ample case law covering this principle.

In fact, our circuit, the first court of appeals, has ruled that, for example, if the district court in the exercise of the limited discretion that they have, interprets a statutory or non-statutory point of Puerto Rican law, and the case is taken to appeal on other grounds, and in the meantime the Supreme Court of Puerto Rico issues a different kind of interpretation, the circuit is bound, not by the district court, but by the Supreme Court. By the Supreme Court's interpretation.

So that, what we are doing here is simply putting down what is the existing doctrine in federal court, the same relationship with the state court.

The CHAIRMAN. Now, that is a step beyond. What you are saying is the old *Erie* v. *Thompson* doctrine.

Mr. FUSTER. We are beyond *Erie* v. *Thompson*. The U.S. Supreme Court has already ruled that in what regards the obligation of the local courts, the federal courts have to defer to local courts for interpretation of state law.

The CHAIRMAN. Do they do that under *Erie* v. *Thompson*?

Mr. FUSTER. Yes. Under *Erie* v. *Thompson*. What I am saying is that the Supreme Court of the United States has ruled that that doctrine is applicable to the courts of Puerto Rico in its relationship with the federal courts, to the point that the mechanism and certification has been created and it can be used right in the middle of a case. The basic problem that we have.

So what is being put here is something that comes out of the existing, well-established judicial doctrine on this matter.

The CHAIRMAN. Well, no, this goes a step beyond it. Suppose you had a Puerto Rican statute that says, two plus two equals four. Very simple, incapable of being misunderstood. But you get into court, and they say, well, here is two plus two versus four. There is no Supreme Court case on this. Therefore, you have to stop this proceeding, certify the case over to the State Supreme Court, wait on a crowded docket, and delay justice.

Is that what you would require?

Mr. FUSTER. Well, the existing doctrine is that the federal court has to put itself in the place of the Puerto Rican court and decide on the same basis that a Puerto Rican court would have decided upon.

The CHAIRMAN. Exactly. But I am saying it might be perfectly clear. It is unconstrued, but it is perfectly clear. There has never been a case on it, let us say, because there never needed to be. It is so clear. Occasionally, legislatures and congresses can write a statute like that. Not often enough.

Senator MCCLURE. By accident.

The CHAIRMAN. Occasionally. Well, I think——

Mr. FUSTER. That is why the mechanism of certification was created, because the general decision of the judicial conference is that these are matters that are best referred to the state courts in order to avoid precisely the lack of uniformity, or problems in appeals that might occur because of changes in the state law while the appeal was pending.

The problem that we have, basically, is that the courts in Puerto Rico sometimes give themselves liberties regarding established United States Supreme Court decisions on these matters that other federal district courts would not take as related to state court decisions.

Governor HERNANDEZ-COLON. Mr. Chairman, you might not have the problem. Because the way this language reads, it says a district court shall not undertake to construe. It does not mean to apply. And the matter of construction presupposes the need for interpretation.

So two plus two equals four. In that situation it would not give rise to the situation that the statute contemplates for certification. It would be a statute that needs construction.

The CHAIRMAN. Well, you see my point and I see yours, and let us have the lawyers work on something that is more workable here.

Everyone thinks that Puerto Rico courts ought to have the right to construe its own laws, and that federal courts ought to be bound by that. There is not arguing about that. But we do not want to unduly ensnarl the judicial process, and I think there is probably a way to do that. So let us have the lawyers think about that.

Now, the proceedings of the United States District Court for the District of Puerto Rico shall be conducted in the Spanish language, upon the request of any party to the proceedings.

The present situation is that it is conducted——

Governor HERNANDEZ-COLON. In English.

The CHAIRMAN. In English, and then translated——

Governor HERNANDEZ-COLON. There is a translator present in order to translate the proceedings to the parties. To an accused, for instance, or to translate the testimony of a witness.

Given the fact that you have 58 percent, almost two-thirds of the population, that do not speak English at all.

The CHAIRMAN. I understand that there is a problem with having enough translators in Puerto Rico at the present time. Is that correct?

Governor HERNANDEZ-COLON. I would not say so. Perhaps there is a problem with funding of the courts to have the necessary translators. But I would certainly say that there are enough translators available in Puerto Rico to do this job.

The CHAIRMAN. And you would—now you have a requirement for a translation, do you not, into Spanish?

Governor HERNANDEZ-COLON. Yes.

The CHAIRMAN. At least there ought to be a similar requirement, if you are going to conduct them in Spanish. A requirement for translators, for those who speak only English.

Governor HERNANDEZ-COLON. Well, when a party or a witness comes before a federal court, has to testify or speak to the court, then a translator is made available to him, if he cannot speak in the English language.

If an accused person is brought before the court, a translator is made available to him.

In Puerto Rico you have an awesome problem with jury selection in the federal court, because you have two-thirds of the population that cannot serve automatically. And, possibly, 20 percent more.

If the parties had the right—we are not saying that all cases should be in Spanish, because some people do prefer to conduct them in English, and they ought to have the right to do so.

But if a party, an accused, or a civil litigant should need to conduct his case in Spanish in order to better understand what is going on, this right should be provided because it is elemental to the rights as a citizen to be able to comprehend the proceedings, the judicial proceedings under which he is working.

The CHAIRMAN. Senator McClure.

Senator **McClure**. As a matter of practice, are those who are not fluent in English excluded from jury service?

Governor **Hernandez-Colon**. Yes.

Senator **McClure**. They could not function with translators? That is not required?

Governor **Hernandez-Colon**. You see, the case cannot function totally with translators. The arguments of——

Senator **McClure**. Well, in federal court, you have many cases in federal court because of diversity questions. And there you may well have parties on one side who understand no English, and parties on the other side who understand no Spanish. Now, what do you do in a situation like that?

Your rule would require that it be conducted in Spanish if anybody made that request.

Governor **Hernandez-Colon**. I think you would have to go with the language in Puerto Rico, because it would be the language of the majority of the parties that would be so affected by that situation.

Senator **McClure**. I understand that, although I am a little bit troubled with the notion, particularly in diversity cases.

Governor **Hernandez-Colon**. Perhaps something could be worked out for those cases.

The **Chairman**. I was just going to say, the diversity cases, I think, are ones that would give you trouble here, because your interest is to attract industry to come to Puerto Rico. And to the extent that you subject them to court judgments, all in the Spanish language, when they are probably an all English-speaking corporation, might be a discouragement to those companies.

Now, when you are talking about criminal defendants, that seems clear. When you talk about a defendant being sued in your courts who speaks Spanish, that seems clear.

But the diversity case, especially, I think, we may want to have some kind of diversity rule for that.

Senator **McClure**. I have no problem if, indeed, people on both sides are equally competent in the language.

I have problems where there is an unequal competence in one language or the other. I do not know how to resolve it, if, indeed, you have a total mismatch of language skills on the two sides of a case. One side or the other is disadvantaged. I understand that.

I do not know how we solve that one, unless, I suppose we could come a little closer to it if we brought the courts into the 20th century, in which they were able to provide simultaneous translation, although that is not perfect either.

The **Chairman**. I understand that about 25 percent of the cases are diversity cases. Perhaps we could have a special rule applicable to those along the lines that Senator McClure said that where someone does not have in a diversity case, made defendant in a Puerto Rican federal case, or maybe plaintiff or defendant who does not have language skills.

Governor **Hernandez-Colon**. You can perhaps make it optional in those cases for both parties, because they may find it advantageous to hold the trial in Spanish, even though one of the parties may be from the State of New York, or whatever. Because of the witness, the documents and everything.

The **Chairman**. Exactly. Well, let us think that through and I would like to hear more from you in writing on that, or orally, if you have some further ideas.

Senator **McClure**. Mr. Chairman, awhile ago you confessed that you were talking while you were thinking. I guess I will subject myself to the same hazard.

I am not sure I would have any problem at all with a provision that permits the proceedings to be in Spanish if all parties agree. I think that might well facilitate the administration of justice.

I have a little problem requiring it to be in Spanish at the request of one party. If, indeed, the other party does not agree.

You have, kind of the flip side of that, I think probably in the Puerto Rican courts, where I assume all proceedings are in Spanish as a matter of course, even though one of the parties might understand no Spanish. I do not know how you resolve that in a bilingual society, particularly where everyone is not bilingual.

But we are partaking of both. The federal court system is a system of the United States government, not of the Puerto Rican government. And the United States, by and large, now, not totally, conducts its processes in English with provisions in the equal access to the Justice Act and other provisions that people be afforded the opportunity to understand what is happening around them in the court room, through the services of translation.

Governor **Hernandez-Colon**. But take defendants in cases before the district court of Puerto Rico. The use of the English language there is a situation affecting all the parties that are involved. It is much different than, say, a Spanish-speaking defendant indicted before the courts here in the District of Columbia, or wherever in the United States.

You are talking about all the parties and components, all the participants in a trial who speak Spanish. That is their basic language of communication. And here they are forced to communicate in another language in such a vital matter as a criminal trial.

The **Chairman**. Now, on this question of the law arising under the Puerto Rico Federal Relations Act, you want to move from the First Circuit, which is Boston, to the D.C. Court of Appeals. Why D.C.?

Governor **Hernandez-Colon**. D.C. is the judicial circuit with the widest and most extensive experience in interpreting laws that affect the actions of the departments and agencies of the government. It is the court most immersed in proceedings where the government is involved.

We would like to have uniformity of interpretation regarding matters of the compact, or matters where there is an interaction between the Puerto Rican and the Federal system. And we believe that the District Courts here are the proper forum for that, given the fact that they have the broadest possible experience with regards to the application of the Federal laws guiding the action of departments and agencies.

The **Chairman**. Why would you want to transfer a District Court case from the District Court of Puerto Rico to the District Court of D.C.? That looked like forum shopping to me.

Governor **Hernandez-Colon**. For the same principle. It would be cases where the government would be involved, where a Federal statute was going to be brought to bear on the Puerto Rican government or officials of the Puerto Rican government; and in that case, the relationship between the Puerto Rican government and the Federal Government would be at issue in a certain way. And it would be just an option for the Puerto Rican government to transfer the case.

The CHAIRMAN. I just cannot see that work. I mean I think it could be—I am sure this government would not use it that way, but it could be used in a vexatious way. You are sued by somebody for a permit, and you say well, we will just go to D.C. and let you fly up there, and have all the attendant expenses and difficulties.

Governor HERNANDEZ-COLON. No, no. In the errata we submitted language to the effect that if the government should exercise that right, then they would have to pay the cost, the cost of the other party in litigating here.

Senator MCCLURE. I wish they did that for the folks from Idaho. I would love to get everything out of the District Court here that affects my state.

The CHAIRMAN. Well, I just do not think there ought to be a choice of forums in the District Court there. I can understand that Boston may not be appropriate. I understand your argument about appeals to the D.C. Circuit, although an appeal to the circuit in Miami—which one is that, the Eleventh—would seem to be a more convenient forum. But just to have the ability to forum shop between those two, looking at which one might be the more sympathetic to Puerto Rico, it seems to me would not be appropriate.

Senator MCCLURE. Mr. Chairman, may I make a comment on this point?

With respect to this provision—and I will ask this question because I want to know sincerely what your attitude is—is this really a question that is related to your status, or is it a question related to the workings of the judiciary system that has nothing to do with your status?

Governor HERNANDEZ-COLON. Well, it is related to the status.

Senator MCCLURE. In what way?

Governor HERNANDEZ-COLON. At the present moment, you have in the District Court in San Juan seven judges who are statehood advocates. They are activists in that sense. They are activists to the extreme that the Chief Judge in naturalization proceedings on two occasions when he was swearing in the naturalized citizens told them that they were getting second-class citizenship of the United States, because Puerto Rico was not a state. So all actions of the Puerto Rican government before that body are viewed from that ideological perspective; and we do have a very serious problem with that court when they have to interpret the compact or our relationship with the United States.

Senator MCCLURE. I understand that. One of the reasons that I asked the question is I am really trying to get at what was behind this desire to change venue. This legislation is going to be hard enough to formulate and to get by the Congress, and if we do not have matters that are really essential to the status question, I suspect we ought to leave those to separate resolution of those problems rather than try to merge all solutions into this legislation.

The **Chairman**. I would think that is true, and we especially want to be careful about sort of not picking sides, and it seems to me we are going to have to resolve some issues for one side or the other. Some things you will like, and some things you will not like. But in this particular one it seems to me this is a head-on collision between the Statehooders and Commonwealthers, and we want to avoid having to make this kind of decision if we can. And it seems like this ought to be a fight for another day, at least at the District Court level.

Now, the Court of Appeals, there may be an interest in that, but we would need to consult with the Administrative Conference on the Courts and Judiciary, I think, to get advice on this.

Governor **Hernandez-Colon**. Yes, we do understand that, Senator.

The **Chairman**. Now, with respect to passports, I understand that your proposal does two things. It gives the Governor authority to issue passports and authorizes limited visa waiver. What is the problem? I understand you have wanted to admit some people to Puerto Rico who had been refused visas to the United States.

Governor **Hernandez-Colon**. The way that this would work, Puerto Rico could exercise an authority really to direct the Immigration Service to issue a visa for 30 days to a visitor that is invited by the government of Puerto Rico.

Now, this would not apply to categories of visitors that have been excluded by presidential proclamation or by whatever means from getting visas in the United States. So this would be a matter where, let us say, the government of Puerto Rico, I, as Governor, invite President Balaguer to visit Puerto Rico, and I, in making that invitation, would know that I would have the right to ask from the Immigration Service to issue a visa to President Balaguer.

Senator **McClure**. What would happen if somebody were denied entry to the United States, were permitted entry to Puerto Rico?

Governor **Hernandez-Colon**. If you are denied entry to the United States by proclamation, by some proper, legal means, then you cannot. This would not authorize the government of Puerto Rico to allow the entry of that person, that is all, because they are excluded from this.

The **Chairman**. I do not quite understand it. Could you tell us what this is designed to do?

Governor **Hernandez-Colon**. It was exactly what I mentioned, the example. There are people that the government of Puerto Rico would invite to visit us in Puerto Rico for a period of time from, let us say, one of the Caribbean countries or from Europe or from whatever. These people would need to enter the country.

Now, as a government, and given the fact that this invitation is not addressed to a person that is in a category which is excluded from coming into the United States, it is within the realm of categories that are authorized to come into the United States, that as a government we should have the right to issue or to ask the INS to issue a visa for a maximum of 30 days, so that that person can visit with us in Puerto Rico.

The **Chairman**. What is the problem we are getting at here? Has the INS refused to issue these visas?

Governor **Hernandez-Colon**. Yes. We have had those problems.

The CHAIRMAN. But they are not in excluded areas; they are on discretionary grounds? Is that what we are talking about, where the INS, exercising its discretion under the law, refuses a visa?

Governor HERNANDEZ-COLON. Those cases have arisen, and the Resident Commissioner deals with them all the time.

Mr. FUSTER. We have had the cases of learned intellectuals, winners of the Nobel prize and stuff like that, and the university wants to invite them for a three-day lecture, the University of Puerto Rico. And somebody from Immigration decides that the person has written a book on Marxism in his country, and he ought not be allowed to come into the University of Puerto Rico for three days to give a lecture. When it is somebody that is well read in Puerto Rico, somebody that is very close to our own culture. Sometimes it is unbelievable that something like that would happen.

The CHAIRMAN. How many times has this happened?

Mr. FUSTER. It does not happen every day, but——

The CHAIRMAN. Was it just once?

Mr. FUSTER. Often enough. I have to deal with Immigration several times a year with stuff like this.

The CHAIRMAN. Several times a year?

Mr. FUSTER. Yes. They are not all of the same rank, mind you, but it has included people that are Nobel Prize winners, of the highest intellectual stature in Latin America. And I am not even sure if Harvard University wished to invite them that they were to deny the visa.

The CHAIRMAN. What I wish you would do on this is to go back and look at your records and give us a brief description of those who are excluded, because frankly, this seems like a fine idea to me, but I can see that it could be highly controversial. They may be somebody that fits in this category that could provide a very prime example of how Puerto Rico now wants to become the haven for drug smugglers. Think of the worst people you can think of. I do not want to have to defend this bill on the floor of the Senate against that kind of attack.

What you tell me seems to be very reasonable indeed, but if you would go back and look at your records, then we can judge frankly the kind of political attack that this might involve, and then you will have to just decide how important this is to you. We are dealing with fundamental issues of status and self-determination, and because one or two people every now and then cannot get in for 30 days and it causes a brouhaha—if that is not of primary importance to you, and it does cause a lot of political baggage, we might not want to deal with it.

Mr. FUSTER. Senator, let me just mention, because the proposal that appears here, these are persons that are invited by the Governor of Puerto Rico. When you mentioned drug addict and whatever, these are people that the government of Puerto Rico is assuming the responsibility for the few days that they will be in Puerto Rico, they will not commit illegal acts or try to get into the mainland. So that it is really very limited in scope, what is being proposed.

Senator McClure. Do we have any restrictions now on the flow of foreign visitors from Puerto Rico, between Puerto Rico and the United States?

Mr. Fuster. No.

Senator McClure. So what you would be doing is erecting a new class in which they could be admitted to Puerto Rico but would be barred permission to come to the mainland, is that correct?

Governor Hernandez-Colon. They would be people who have no interest in coming to the mainland.

Senator McClure. I am not questioning whether they want to or not. I am just saying that we would be, by this action, creating a new class of Puerto Rican visitor who has, even though he is legally in Puerto Rico, would have no right to visit the mainland.

Governor Hernandez-Colon. Well, it could be looked upon that way, but what we are really talking about are the cases of perhaps 10 or 15 persons a year, at the most, that may come, that they come at the invitation of the Puerto Rican government, and they are invited to Puerto Rico, and they come on account of that invitation.

The Chairman. Suppose we restated it and said that at the invitation of the Governor, unless otherwise excluded by category, the INS shall issue a visa for a period not to exceed 30 days.

Governor Hernandez-Colon. Oh, yes. That is exactly it.

The Chairman. You do not physically necessarily want to issue visas.

Governor Hernandez-Colon. No, no, no, not at all. That is exactly it.

The Chairman. Now, do you physically want to authorize the issuance of passports?

Governor Hernandez-Colon. Not necessarily. We just want an office there, however.

The Chairman. What is the problem on passports?

Governor Hernandez-Colon. It is in Miami, and the visas are in Vermont.

Senator McClure. Have you investigated or analyzed the question with respect to the person who has a right to enter Puerto Rico under such a visa, the right to travel in the United States?

Governor Hernandez-Colon. Yes.

Senator McClure. You are, if I understand you correctly, and stop me if I am wrong, upon entry to Puerto Rico, you are entering the United States.

Governor Hernandez-Colon. Yes.

Senator McClure. A foreign visitor. And a foreign visitor has certain rights once entering the United States legally.

Governor Hernandez-Colon. These visitors would only have the right to visit Puerto Rico under this provision for a period of maximum 30 days, no more.

Senator McClure. I understand what you are getting at, but I am trying to understand its relationship to other rights invested in legal visitors to the United States, whether or not you can legally restrict that right once they have entered.

Governor Hernandez-Colon. That would be a legal question.

The Chairman. Well, I think we could put it right here in the statute.

Senator McClure. Well, I am not sure we can. That is what I wondered.

The Chairman. Well, you might have counsel look at that question of whether we can extend that, whether we can limit it to 30 days and limit it to the jurisdiction of Puerto Rico.

Governor Hernandez-Colon. Yes.

The Chairman. I would think we could, but let us look at that. And there ought to be another way to solve this problem of issuing passports. It seems to me that those ought to be issued by the State Department, but perhaps we can——

Senator McClure. One of the things that bothers me in that connection is once they are in Puerto Rico, we have no restrictions on the flow of people from Puerto Rico to the United States. We have no current means really to restrict that or even to screen that. We would suddenly have a class of people that might be legally present in Puerto Rico but have no legal right to come to the mainland under an entirely new classification, which we would have to then monitor travel.

Governor Hernandez-Colon. Not at all, because you are talking about people who are invited by the Puerto Rican government.

Senator McClure. I understand that. Is the Puerto Rican government going to—are you going to manacle them to the arm of a Puerto Rican government official to make sure that they do not catch the next plane to Miami?

Governor Hernandez-Colon. No, but we are going to extend our hospitality to them. You are talking about people who may be staying in the Governor's mansion with me. As a matter of fact, you are mostly talking about people—

Senator McClure. I understand that, and I assume that if there are very few, it is not a very large problem.

Governor Hernandez-Colon. That is it.

Senator McClure. But we have no means at the current time to determine what their movement is.

Governor Hernandez-Colon. You will have no problem with it.

The Chairman. If they are going to enter the United States illegally, they would be entering illegally anyway.

With respect to the issuance of passports, in Guam I am advised that the U.S. Attorney is authorized to do that, and I wonder if that kind of provision would solve your problem, to allow the U.S. Attorney to issue passports, so that you would always have someone there.

Governor Hernandez-Colon. Traditionally, there was a delegation to the State Department of Puerto Rico to issue passports, and that is the way it has worked for many years. Now it is transferred to Miami. The practical problem is, of course, the fact that it has been transferred to Miami.

If it is mandated that they be issued in Puerto Rico, whether by State Department opening up an office there or by some other Federal official, we do not have a problem with that. We would prefer to do it the traditional way, but essentially, what we want are the passports to be issued in Puerto Rico.

The Chairman. All right. I think we can respond to that section in some appropriate way. We will talk to the State Department, and if they can open up an office, that would be the best. If they cannot, we could authorize the U.S. Attorney to do it and provide that you shall be adequately served.

In Section 17 you authorized the Governor to authorize Puerto Rican officials to serve Federal warrants intended to address the problem of illegal immigration. Is this intended to address the problem of illegal immigration, or is the enforcement of some other Federal laws also intended?

Governor HERNANDEZ-COLON. No. It is illegal immigration. We have at least hundreds of Dominicans coming in on a weekly basis, and the border patrol there has done the best job it can, but it really has not been able to control that. And we have Puerto Rican resources that we can assign here, but they cannot intervene with these people; and this would give them the authority to do so.

The CHAIRMAN. I wish you would have counsel give us a memo on whether this, whether we can constitutionally deputize the non-Federal official. I guess you can.

Governor HERNANDEZ-COLON. Yes. I do not think you would have any problem with that.

The CHAIRMAN. Senator McClure says you can deputize but you cannot delegate. In effect, you would be making them a Federal official.

Governor HERNANDEZ-COLON. What we would like is the practical effect to be able to use our resources and our people to deal with that problem.

Senator MCCLURE. And we would like to have the help.

Governor HERNANDEZ-COLON. So, however you structure it, that is fine with us.

The CHAIRMAN. Now, on this question of historic sites and conservation lands, this provision transfers to Puerto Rico, without compensation, title to all lands, buildings, interest in land and other property now owned by the United States and within the territorial limits of the Commonwealth of Puerto Rico, and acquired under the Treaty of Paris, including the Caribbean National Forest and El Morro.

Do you know how much land? Do you have an inventory of these lands?

Governor HERNANDEZ-COLON. We will submit it. We are talking about 11 properties. We are not talking about military bases such as Roosevelt Roads. We are not talking about Vieques. We are not talking about Fort Buchanan. We are not talking about properties of that nature. We are talking about properties like El Morro and San Cristobal, which are currently under the National Park Service, and there are 10 or 11 properties. Those contain the most important monuments in Puerto Rican history, the two that I just mentioned. The others do not.

The CHAIRMAN. I am right in the process right now of trying to transfer to the Federal Government, to be operated by the Park Service, an old, historic site in Louisiana simply to relieve us of that burden. And you want to operate these things and pay the bill?

Governor HERNANDEZ-COLON. If we had to, we would, if that were the condition to get the transfer. Because this is very important to us. These buildings are part of our heritage and we believe that as a matter of principle they should belong to the people of Puerto

Rico and what we are proposing here is to have them transferred and then we would discuss the terms and conditions for Federal administration, that we would not be against—we would not be against assuming full responsibility for administering and maintaining these historic sites.

The CHAIRMAN. The Corps of Engineers right now is repairing those walls at great expense out there at El Morro.

Governor HERNANDEZ-COLON. Yes, great expense. But the point is so significant to us that I am prepared to say here that we are prepared to face up to all of those expenses.

The CHAIRMAN. What is the problem, here? Are they insensitive, or what?

Governor HERNANDEZ-COLON. The people administering them at the present moment are particularly insensitive. But however, when we have visitors to Puerto Rico and our people too, we would like them to view these as monuments of Puerto Rican history and so this is why we believe that they should be in the hands of the Puerto Rican government.

Senator MCCLURE. If I might comment at that point, Mr. Chairman, you know I do not want to be unduly possessive or parochial, but as an American citizen, not of Puerto Rican ancestry, I have a little bit of emotional attachment to El Morro, too.

Governor HERNANDEZ-COLON. Very good.

Senator MCCLURE. It is a part of my history. My state came in as part of the Louisiana Purchase. We are inextricably bound by some common heritage and the evidence of the European colonization of the Americas is a part of my heritage, regardless of which European nation it may have been. I want to express that, because I have a very deep attachment to some of the things to which you have a very deep attachment. Even though they may be in Puerto Rico they are part of my heritage, too.

The CHAIRMAN. Governor, I understand you are having some problems. Staff has just told me and now that they have, I recall having been told about that and I am sorry we have not been able to respond more quickly. I think we should try to respond to your problem.

Really, the Park Service I think it is, should try to do that and without delay. Regardless of what happens to this bill we ought to try to do that and if we can fully respond, do we really need this provision?

I do not find a lot of difficulty in it. I just wonder—I mean, the Park Service generally speaking does a better job with these things, has greater resources than Puerto Rico would have.

Senator MCCLURE. Mr. Chairman, may I make a suggestion at this point? If you would provide for us a list of the properties that you have in mind, we might be able to develop more precise language and discuss the individual properties. Certainly, I might have a much different feeling. I do have a much different feeling about El Morro than I would about El Yunque, for example.

I am also a little bit concerned about the broad scope of the language which you have suggested, because I think, although you do not intend it to apply, it might well apply to Roosevelt Roads and I do not think—I take you at your word that you do not intend it to.

Governor HERNANDEZ-COLON. Not at all.

Senator McClure. But I am not at all certain that it was not covered by the same provision of the Treaty of Paris.

Governor Hernandez-Colon. No, no, no. That is not the case.

Senator McClure. If indeed there is a difference I would also welcome that—because I want to work this provision out. I have no reason to want the Federal Government of the United States to continue to own or exercise jurisdiction over properties that might well be returned to Puerto Rico.

I wish the same courtesy would be extended to the State of Idaho. The Federal Government owns two-thirds of my state.

The Chairman. I am advised that there are precedents whereby state-owned lands are operated by the Park Service under lease and certainly this could be done. It just seems to me that the easier way to get at the problem might be to correct these problems you are having, and I understand they are real and they ought to be corrected and we will try to do that anyway.

In the meantime, we will look at—when you have that inventory, let us know and we will try to deal with this. It should not give us a lot of problems.

On this question of community values, there is a bill presently reported from the Judiciary Committee by Senator Simon, S. 593. It passed the Senate yesterday, I am advised, by voice vote and authorizes this community values. It seems to me we ought to let that bill wind its own way, rather than try to encumber this legislation with it. Do you have any serious disagreement with that? It has already passed the Senate. It is S. 593. We can get you a copy of it.

Governor Hernandez-Colon. We would have to take a closer look at it to see if it does cover—you see, we intend it to cover violence, pornography, alcohol and drugs.

The Chairman. It says, alleviate the negative impact of violence in telecast material, or to alleviate the negative impact of illegal drug use in telecast materials. I think the better thing to do would be to have Commissioner Fuster look at amending this if there is something that it does not do that it ought to do. I would think—you mentioned alcohol use. That probably is encompassed within drug use.

Governor Hernandez-Colon. Possibly, yes, and also pornography.

The Chairman. I do not think they have pornography, but again, we could get into First Amendment problems I would think.

Governor Hernandez-Colon. It would be voluntary.

The Chairman. Well, it suits me fine, but as a matter of fact did the Helms Amendment pass yesterday that I think added pornography? I believe it did. Yes, I think it is, so I think it probably covers it all.

Governor Hernandez-Colon. Maybe we have the problem solved.

The Chairman. I hope so. Two other small things here and that is the assumption of budgetary responsibilities and transfer of Federal functions. Again, this is a possible *Buckley* v. *Valeo* problem. I will have staff communicate particular questions and let you respond in writing on the legal question on both this and on sub-part 21. That is a technical problem which I do not believe is a large problem.

Senator McClure, do you have any further questions?

Senator McClure. If we have an opportunity to submit questions in writing for response, for the record, I will do that. I do not have any further questions at this time.

The Chairman. Oh yes, of course we will, and we will not only have questions, but if you have answers to which questions have not yet been put, we would solicit those. We would also encourage both you and other witnesses to trade with us any legal opinions you have on any likely subjects and any subjects that you want the answer to. Sooner or later it is going to come up as a question so do not worry about raising it as a question. If it is a legal question, it will be raised, and we have got the Congressional Research Service, we would like to get them to work. We hope the Finance Committee and their staff will be willing to help us in this matter.

While I have got you here, let me ask you this question. On Section 936, with respect to Statehood and obviously this is a question to which the Statehooders are going to need to ask, have you looked at—you or your counsel, looked at the mechanism of that, as to how it could be mechanically phased out without reference to the number of years?

Let us say you wanted to pick a number of years in Section 936 and phase it out. Is there a mechanism by which that can be done? In Statehood it says you just start negotiating; after 10 years, if nothing happens until 15 years and then you take it down 10 percent a year for over a period of 10 years, so that in effect it would last 15 years unabated and then go down 10 percent a year for 10 years.

My question is, as a mechanical, workable thing—not with reference to the merits of whether it is a good or bad idea—can that be done, or must it be amended in another way? I am not talking about the uniformity clause now, I am talking about just the mechanics.

Governor Hernandez-Colon. I have to ask counsel.

The Chairman. If Mr. Copaken wishes to testify——

[Pause]

Governor Hernandez-Colon. We have with us an opinion of Professor Lawrence Tribe of Constitutional Law of Harvard University and he addresses this precise point here and says, as a result the NPP proposals for a gradual imposition of Federal individual income taxes from which Puerto Rican residents are now exempt, and for gradual phasing out of Federal corporate tax credits, which is 936, which are now available to business in Puerto Rico, cannot be realized under the Constitution.

Now, the Statehooders did propose when we were dealing with the problem of 936 another mechanism, which they found consistent with Statehood, and it was the mechanism of the wage credit. This was proposed by Baltazar Corrada to the Secretary of the Treasury I think in 1985, and there is a letter from him.

So you might want to look at that, which is another mechanism, and as a matter of fact, it was what Treasury was proposing to the Congress to substitute for 936, this wage credit.

The Chairman. Well, really, that is certainly a question that we are going to have to look into as well as the Finance Committee. I am just dealing with the question of the mechanism, and what you are saying is it cannot be done constitutionally, so you have not looked at a mechanism. That is really, I guess, for the Statehooders to give us their judgment about that.

As a final question, we have the other two parties tomorrow. Is there any particular area that you think we should delve into with the other parties? I am sure they are going to talk about your proposal, so I want to give you the same right.

Governor HERNANDEZ-COLON. Well, I brought them up in my presentation. I think they have to be examined and held to account as to what their positions are as to 936; as to the tariff on coffee; as to the language issue, which is not merely saying that they are going to teach—they are going to get better English teachers.

But really there is a very fundamental question which the Congress will have to resolve, which is, are measures such as those taken in Louisiana, or in New Mexico, to be taken in the case of Puerto Rico in order for English to become a primary language in Puerto Rico?

It is a very basic difference between it being an official language and a primary language, and that of course, they have to be precise and concrete on that. They have to be precise and concrete on the issue of the debt, and what they are saying is the Federal Government is going to take over the debt of the government of Puerto Rico.

They have to also be precise on the question of the Amateur Sports Act, which they do not purport to amend and which holds that the United States will have one Olympic Committee and they say in Puerto Rico that, no, they will resolve this matter with the Olympic Committee—the International Olympic Committee. They do not have to come to Congress for an amendment for that.

The CHAIRMAN. Those are matters, of course which you have raised in your original statement. I was really just referring to any additional things that have occurred to you.

Governor HERNANDEZ-COLON. No, no. I think we have covered it.

The CHAIRMAN. Well, Senator McClure, if you have no further questions——

Senator MCCLURE. I have no further questions at this time.

The CHAIRMAN. Thank you very much, Governor, and Commissioner Fuster and the President of the Senate and the Speaker of the House for your attendance. You have been very helpful. Your statements have been very good. In fact, all of our testimony has been excellent today.

Tomorrow morning we will begin at 9:30 a.m. with Senator Ruben Berrios Martinez and at 1:30 p.m. Governor Carlos Romero Barcelo, and that will terminate our hearings, the afternoon session tomorrow, until we go to Puerto Rico. The first hearing will be on the 16th July.

Thank you very much.

[Whereupon, at 6:01 p.m., the hearing recessed, to reconvene Friday, June 2, 1989.]

POLITICAL STATUS OF PUERTO RICO

FRIDAY, JUNE 2, 1989

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:40 a.m., in room SH-216, Hart Senate Office Building, Hon. J. Bennett Johnston, chairman, presiding.

OPENING STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The CHAIRMAN. The hearing will come to order.

We are very pleased this morning to continue our hearings on Puerto Rico and to welcome Senator Ruben Berrios Martinez and his colleagues who will speak about independence.

And if I may, first of all, clear up something that was said yesterday. It now appears certain that we will pass the $1.5 million for expenses of the referendum, and I wanted to be sure that the statement made yesterday that $1.3 million had been provided—I think this is for your regular expenses, post-election expenses, and the $1.3 million was not for this referendum and for your expenses related to that. Is that correct?

Senator BERRIOS. That is correct, Senator.

The CHAIRMAN. Well, please proceed, Senator Berrios.

STATEMENT OF SENATOR RUBEN BERRIOS MARTINEZ, PRESIDENT, PUERTO RICAN INDEPENDENCE PARTY, ACCOMPANIED BY ERICK NEGRON, ESQ.; PROF. PEDRO PARRILLA; SENATOR FERNANDO MARTIN; REPRESENTATIVE DAVID NORIEGA; PROF. MANUEL RODRIGUEZ; AND PROF. CARLOS GORRIN

Senator BERRIOS. Good morning.

I am accompanied today by a larger group than yesterday. Friends and comrades who are here with me will be taking up some of the answers to the questions in which they are particularly specialized.

The CHAIRMAN. Would you like to introduce your group?

Senator BERRIOS. Yes. From my right, Attorney Erick Negron, Professor Pedro Parrilla, Senator Martin, Representative Noriega, Professor Manuel Rodriguez and Professor Carlos Gorrin.

The CHAIRMAN. Welcome, gentlemen.

Senator BERRIOS. I will not take up any of your time with a long opening statement of any sort. You already know what we think about the independence part of the bills of law. We have told you what our goals in the different areas of this bill of law in that part that refers to independence.

Yesterday I was able to talk about some of the procedural and substantive aspects of the referendum as such. Therefore, I think it is more convenient that since you have already read what we have proposed regarding independence and I already told you about the thing regarding procedural and substantive issues, we utilize this time in this manner to hear your questions and entertain your questions. And we can even clarify some points we might not have very clear in our minds also regarding certain aspects of what you might think. I think that is the best way to conduct this hearing. So, Senator Johnston and Senator McClure, I am at your disposal for your questions.

The CHAIRMAN. Thank you very much, Senator Berrios.

First of all, on the question of statement of purposes, my own feeling is—and I will give you the right to disabuse me of this feeling—that the statements of purposes for all three of the parties are the kind of arguments you would make during the election and probably from the standpoint of what we ought to put in our bill, it ought to be neutral as to purposes and descriptions and that sort of thing.

Senator BERRIOS. You might very well be right, Senator. I must tell you that this issue was brought up in a conversation between your staff and my staff regarding this matter, together with other issues, and we thought many of the points that your staff brought up were very well brought up. And therefore, I will say these technical matters are very easy to fix, including the whole issue of the preamble or the statement.

We would like it to be there. We can agree that one of the issues is more a part of a political campaign and the rest are more a statement of principles, but we can speak about which parts of it should be included and which parts of it should be left out. I think that refers to more administrative and technical matters. That doesn't go to the heart of the matter.

The CHAIRMAN. As Senator McClure suggested yesterday, if you remember, we were talking about the language that goes on the ballot, and Senator McClure suggested why don't we just put one word on there and let you explain it during the process. This is the same kind of issue I think, and I think for us to be very neutral on that and let you do the explanation would be best.

Now, on this question of a constitutional convention, how do you see this? Let's say we go through the process and the people of Puerto Rico vote for independence. Does this document then rise to the status of a treaty, or would you have to come in later and have a treaty between an independent country and the United States?

Senator BERRIOS. The document as it refers to the process that will take place after the proclamation of the republic will be part of a treaty, but the document before that, the process before that, refers to U.S. laws. But the treaty does not stand by itself in all its issues.

The CHAIRMAN. Well, I know you have a treaty of friendship and cooperation.

Senator BERRIOS. Correct.

The CHAIRMAN. That is confected after.

Senator **Berrios**. After, that is correct.

The **Chairman**. But the election would constitute the act of independence ipso facto.

Senator **Berrios**. No, no, not the election. After the election, then certain processes have to take place in order for the President of the United States and the constitutional convention of Puerto Rico to come together in a meeting of the minds and the independence will come in force after a referendum in Puerto Rico approves the constitution.

The part referring to the treaty of friendship and cooperation is that part after independence has come into existence. But even that treaty doesn't stand by itself because certain issues will have to be treated by a joint commission of United States and Puerto Rican delegates. And those are stipulated there. So, part of it becomes treaty, and part of it is just U.S. laws.

The **Chairman**. So, as of the time of that election, Puerto Rico would still be, as you would describe, an appendage subject to the power of Congress?

Senator **Berrios**. That is correct, Senator.

The **Chairman**. And the Congress could change its mind at that point?

Senator **Berrios**. The Congress of the United States doesn't change its mind wildly. It changes its mind rationally. And after going through such a process, I don't think it would ever change its mind.

The **Chairman**. Well, it seems to me that this process, as I understand it, you would have the election, and let's say you win. Then you have a constitutional convention and then a ratification of the constitution, and then an election of officials, and then a joint transition commission, resolution of controversies, proclamation of independence.

It seems to me that all of that process is just what we were criticizing before when we talked about elections where the people didn't know what they were getting. Shouldn't we resolve all of that by statute at this point? We can have later negotiations to iron out things, but if Puerto Rico is to be independent, shouldn't it be independent immediately?

Senator **Berrios**. I would have no objection whatsoever. As a matter of fact, what I am proposing is a type of statute. This is just like a statute. You would do it another way. It's a very simple statute. It would take a lot less time than the Constitutional Convention of Philadelphia which took 11 years more or less. I think can be finished in two years or less.

But there could be other ways to make this in a statutory manner. There is no problem with that. This is just one way in which we can deal with the problem.

Now, the important thing is that whatever statute comes out includes the full participation and full knowledge of the Puerto Rican people of the alternatives and that they be able to vote upon the alternative designed by the constitutional convention once it is designed. That is the great advantage of the constitutional convention, that representatives of the people come together to draft a document regarding how the republic is going to be after it is constituted, and that document is then approved by the people.

This is the manner in which all newly democratically formed nations after the war have come into being. So, this is a very, very normal process. Even in the U.S. constitutional system and history there have been occasions in which this has been used. It is not very strange.

The CHAIRMAN. I think we could well provide legally, although I would want to hear from the lawyers on this, in this statute that upon an approval by the people of Puerto Rico and the election, that you set up the machinery binding on Puerto Rico for a constitutional convention and all of these steps. But it seems to me that the transition—that that should then be a Puerto Rican affair in which the United States is basically not involved.

Senator BERRIOS. Of course. That is correct.

The CHAIRMAN. In other words, your proclamation of independence ought to be—as soon as the election returns are proclaimed, it ought to be independent and everyone ought to know what all of their rights are.

Senator BERRIOS. Yes.

The CHAIRMAN. Including the United States.

Senator BERRIOS. Correct, because the proclamation of independence comes after the constitutional convention.

The CHAIRMAN. All right. Let's provide for that.

Senator BERRIOS. I think it is provided, but if it should be clarified, we have no objection whatsoever to the clarification of that point. I think, Senator, that is one of the points I was referring to on which your staff and our staff got a meeting of the minds in a very fast manner.

The CHAIRMAN. The staff has handed me a flow chart here showing what happens after election day. There would be some months involved before there would be a proclamation.

Senator BERRIOS. Senator, regarding the specific dates and issues, I think Professor Gorrin who is a constitutional law expert can be more specific in this matter.

Professor GORRIN. Good morning, Senators, Mr. Chairman.

Yes. In fact, there is a period of transition before the proclamation of independence between the date of the referendum and the date of the proclamation of independence. The purpose of that relatively short period of time is to facilitate an orderly and harmonious transition from the present status to the republic of Puerto Rico.

I think that it could be cleared up in Title III that once the results of the referendum are announced, there might be some language whereby Congress recognizes then that Puerto Rico is in international law terms in statu nascendi, which would mean that it is unequivocally directed towards independence to clear up your concern regarding possible derogations of the statute by a future Congress. Maybe some language in that——

The CHAIRMAN. Well, I don't think that Congress would change its mind, but either Puerto Rico is independent or it is not. And it seems to me that after the election, there ought to be the proclamation, then your constitutional convention. We can set up all that machinery.

Now, the important thing to me is not so much this interregnum of several months before the proclamation, but to make as best we can all the rights and responsibilities of both the citizens of Puerto Rico, the state of Puerto Rico and the United States clear. We haven't gotten into the military yet. But those kinds of things should not be negotiated after; they should be negotiated before. The rights of Social Security recipients, all of these other things ought to be negotiated before—the principal things.

Senator BERRIOS. Correct. Senator, we just wanted to give the Puerto Rican people a second opportunity to vote upon the constitution.

The CHAIRMAN. Which I think we can provide for.

Senator BERRIOS. Correct. And so, once we have that second opportunity to vote on the constitution, I think it is very easy to open this matter.

The CHAIRMAN. The ratification of the constitution. Basically these are matters of your concern, and we can give our help in providing for that.

Well, staff points out the problem that might result if a constitution is not ratified. But again, this ought to be something for which you provide the machinery because if Puerto Rico is independent, then that's your problem. The United States would, of course, be a very friendly neighbor, but it shouldn't be the arbiter and the big brother in that situation.

Senator BERRIOS. That's correct.

The CHAIRMAN. Now, the transition commission. I suppose we would need it even if we have all the rights declared.

Senator BERRIOS. That's correct also, yes.

Senator MCCLURE. May I ask one question in that regard because obviously there is a period of time? Assuming the election favored independence by a majority vote, so it is an unambiguous result, it takes you a while in which to set up a constitution and the government under that constitution. And even though you have by your election chosen independence, that election did not create a government.

Senator BERRIOS. That's correct.

Senator MCCLURE. And I am sure you are concerned about the period. How do you conduct the affairs of government of state between the time of the election and the time that you have established a government?

Senator BERRIOS. Yes. Assuming that it is not a government of the Puerto Rican Independence Party, which is a very real possibility, then that government would be bound by the U.S. laws enacted, for example, this law, and they couldn't go beyond that law. But definitely everyday life in Puerto Rico would continue normally as usual.

Senator MCCLURE. As was the case prior to the election.

Senator BERRIOS. That is correct.

Senator MCCLURE. All the election would do is set in motion towards the establishment of the government, but the current government would stay in effect until the new government was established.

Senator BERRIOS. That is correct, Senator.

Senator MCCLURE. That is what you have in mind.

Senator BERRIOS. That is correct.

The CHAIRMAN. Now, you provide for only bona fide supporters of independence be members of the transition commission.

Senator BERRIOS. We think we are outstretched a little bit there. There is no need for that. We don't think there is any need for that.

The CHAIRMAN. All right.

Senator BERRIOS. Once the constitutional convention president names him, that should be enough recommendation for the whole process.

The thing is that, remember, when these bills of law are presented by us, or by you, some things are in them before which stay from another period. And I think this is one of those leftovers from another period which, of course, we will be more than glad to—we think it should be out.

The CHAIRMAN. I would think an even split of the expenses would be fair. Do you agree?

Senator BERRIOS. Excuse me?

The CHAIRMAN. Of the transition commission?

Senator BERRIOS. Oh, yes, of course. That was one of the technical matters, but an important matter. You are right, Senator.

The CHAIRMAN. We have some other details, but we can discuss those between staff.

You provide that U.S. courts have no jurisdiction following the independence, an immediate severing. Has that been thought through? What about cases ongoing?

Senator BERRIOS. Yes, it has been thoroughly thought through. Once again, Professor Carlos Gorrin will be able to answer that specifically for you.

Professor GORRIN. In terms of cases pending before the courts, I must refer to section 4.2 which is part of subtitle 4 and the effects of the proclamation of independence specifically on judicial pronouncements. And that specifically provides that all judicial proceedings in paragraph B pending in the courts of the Commonwealth of Puerto Rico on one side prior to the proclamation of independence shall be continued in the corresponding courts of the republic, and that upon proclamation of independence, the judicial power of the United States, of course, would no longer extend to Puerto Rico after the proclamation.

Senator MCCLURE. Now, when would the proclamation of independence occur?

Professor GORRIN. Well, according to the current version, it would occur after the election of officers of the republic, which would occur after the ratification, which would occur after the convention meets.

Senator MCCLURE. So, the proclamation would occur at the time you have structured the government——

Professor GORRIN. That's right.

Senator MCCLURE [continuing]. And not upon the certification of the results of the initial election.

Professor GORRIN. Right, according to the current version.

The CHAIRMAN. Well, it seems to me, first of all, that you could have an election dispute which would get to the courts, and we ought to make clear that that election dispute is settled in United States courts.

Professor GORRIN. Okay. Going back to section 2.6 on resolution of controversies during the period of transition and prior to the proclamation, that is where the jurisdictional exception has been included. The purpose for the jurisdictional exception is self-evident.

According to the statute, the process after the referendum and before proclamation is predicated upon the principle of negotiation and mutual agreement between the government of the United States and the nascent state of the republic of Puerto Rico. Therefore, any exercise of sovereignty, any unilateral exercise of sovereignty on the part of the United States or the nascent republic, would be counter to that policy stipulated in the statute.

The CHAIRMAN. Well, let's say, for example, that another irresponsible group, not this group, seizes control of the Independence Party and you have a fraudulent election. There are ballots stuffed, and somebody brings a suit under the Civil Rights Act and says this violates our civil rights. It was a Noriega election. Who would determine that?

Senator BERRIOS. You don't have to wait for Noriega. We have already had fraudulent elections in Puerto Rico under the Commonwealth constitution. [Laughter.]

Professor GORRIN. In that event, as structured in its present version, the courts of the United States would not have jurisdiction. The matter would have to be adjudicated in the joint transition commission which is the result of this policy of negotiation and mutual agreement between the United States and the nascent republic of Puerto Rico. And should there be no agreement through that process, which is always possible in a process of negotiation, the Commission would submit all issues where there is no agreement to a mechanism of international arbitration.

Senator McCLURE. May I ask a question in this regard? Because I'm troubled. If the people of Puerto Rico choose independence, I hope we get there and get there expeditiously. But there will be a period of time. It takes some time to go through all the process which you yourself have identified as necessary. And the proclamation of independence does not occur until the end of that period of time. Until that proclamation of independence occurs, you are still subject to the jurisdiction of the United States. And it seems to me that during that period of time, in order to prevent the kind of hiatus we may well have in that occurrence, it has to be very clear that the administrative and judicial activities of the United States Government continue as they continue under the existing statute.

Senator BERRIOS. Senator, that is so except in those matters referring to the mechanism of transition as such in which the commission is created.

Let's take an example, Senator Johnston. Let's imagine there was somebody who corruptly stole the elections or who corruptly took over the Congress committee or the Presidents of the United States, for that matter. What are we going to do? What are we Puerto Ricans going to do? Or what are you Americans going to do if it's on our part the defect?

Well, we have to find a mechanism which is not in the hands of either of us if it is going to decide matters pertaining to the electoral results as such. If it is dealing with other individual matters, then it can follow the normal course, but what we propose is this transition commission where we can iron things out through speaking to each other. If we can't agree, then we will find an arbiter which is a neutral arbiter. That is our proposal.

Senator McClure. But my problem with that lies simply in the fact that all American citizens are vested with certain rights under the Constitution of the United States. And those rights will be protected under the Constitution of the United States until such time as there is a government established to which we see jurisdiction. And during that period of time, it seems to me the kind of situation that the Chairman has outlined raises the possibility of fundamental individual rights guaranteed by the Constitution of the United States being transgressed.

Senator Berrios. Like the right to vote.

Senator McClure. Like the right to vote, like the right to free elections, like any number of other rights. And those would have to be tested under the constitutional processes of the United States Constitution up until the time there is the proclamation issued it would seem to me.

Senator Berrios. But now there is an electoral commission in Puerto Rico which deals with those issues of voting rights.

The Chairman. Well, let me give you some practical things to show you. This is not a question of your honesty. I trust you, Senator, implicitly. That is not the problem. But I have been involved personally in election disputes.

The first time I ran for office, I won by 65 votes out of 40,000 on a recount. The day after I was losing, and I won by 65 votes on a recount.

One of my colleagues in the legislature in the Congress down in the Sixth Congressional District won on a—a machine malfunctioned, and it was a very serious question. And I think frankly the only reason he won that election is because his partner had agreed to a rerunning of the election as opposed to taking it to court.

If you have a very close election, you can have legal questions concerning who really won.

Now, let's say you have your election and you think you won on 50.001 percent of the vote by 50 votes, let's say. And you want to get the governor to issue this proclamation. I guess the governor issues the proclamation of independence.

Senator Berrios. No.

The Chairman. Who does?

Senator Berrios. The head of the constitutional convention.

The Chairman. Well, that is if we do not have the immediate ipso facto——

Senator Berrios. Yes.

The Chairman. Well, still somebody has to certify the results.

Senator Berrios. Yes.

The Chairman. The governor certifies the results.

Senator Berrios. That is correct.

The Chairman. And so, let's say the governor says, well, that 50 votes was not there.

Senator Berrios. That's simple. We go to the Federal court of Puerto Rico under this law with an action for the governor to fulfill his obligation under the Federal law which is the one we are considering now. Very simple. That is the only way we have. And we have advanced that answer to the theoretical question, that is the way that is dealt with in the bill of law.

The **Chairman**. If the court should decide that you won the election, then when would your independence have been effective? Would it not have been effective from the date of the election?

Senator **Berrios**. I think that is strictly a legal point, but we can clear it up. There is no problem with clearing it up.

Senator **McClure**. May I ask one question in that regard? I don't know whether you have before you this chart. Would somebody see that the Senator gets a copy of this because this is helpful in our discussion?

What I have asked the staff to hand you is a chart the staff has prepared that is kind of time line of what happens.

Senator **Berrios**. Yes.

Senator **McClure**. And I think this is useful at least in illustrating the problem that I have in mind.

You have an election day here up on the left-hand side in the margin. That line goes clear across the page and then it again continues across the bottom of the page. That line at the bottom is a continuation of the upper line. And it starts with the election day and it ends with the proclamation that is issued.

Now, there is some time in between that, a year or two. During that period of time, you conduct various kinds of activities, one of which may be, as the Chairman has suggested, testing the results of the initial election. That will probably be done under existing U.S. law.

Senator **Berrios**. Correct.

Senator **McClure**. When you get down into the special elections to ratify or reject the constitution, that would probably be done pursuant to whatever statute we write.

Senator **Berrios**. Correct.

Senator **McClure**. Then you would follow with an election of new government officers yet to be proclaimed. Now I assume that election would be under the constitution which you ratified.

Senator **Berrios**. That is correct.

Senator **McClure**. But it still has the possibility at that point of the constitutional guarantees still guaranteed by the Constitution of the United States in terms of individual rights. And if there were any conflict between the two, you might well have a problem with respect to where was the jurisdiction and by what standards was that election tested.

Senator **Berrios**. We propose that Congress create a joint commission to resolve that type of issue. If it can't create a joint commission because constitutionally it can't be done, then the only way out is the normal way out, through the U.S. courts.

Senator **McClure**. I would assume that even if there is a commission established, the activities of the commission or the outcome of the commission's activities would still be tested against the U.S. constitutional guarantees of individual rights.

Senator **Berrios**. That is correct.

Senator **McClure**. And that would, obviously, have to be done in a U.S. court if such a challenge were raised.

Senator **Berrios**. That is correct, Senator.

The CHAIRMAN. Why don't we have, say, an original jurisdiction in the Supreme Court on the sole question of the validity of the proclamation of independence?

Senator BERRIOS. I want to answer that. It might sound like a joke, but it isn't. I'm sure the Supreme Court of the United States, once a decision is taken by the people of Puerto Rico, would be more Independentista than the Supreme Court of Puerto Rico. We have no objection with the nature of the Supreme Court.

But I think a more neutral body should be found for everyday questions like a commission jointly formed. But it is not that I would think that the Supreme Court of the United States would run contrary to that. I think it shouldn't be done that way. That is why the joint commission is there.

The CHAIRMAN. But you have legal rights here, and it seems to me that on that sole question of independence, the validity of the election, it ought to be in a court. And it seems to me you ought to get a final determination of that as quickly as possible. That is why I say original jurisdiction in the Supreme Court. The Supreme Court could always appoint a master.

Senator BERRIOS. May I clarify my mind in this matter? A special court, a master, of course.

What I am trying to understand now—and maybe you can help me in this—you would like either the Supreme Court or a special master or a special court to be introduced in the mechanism for such issues as might come up like the ones you asked.

The CHAIRMAN. Solely the validity of the election, the certification of the results.

Senator BERRIOS. That is the way you think it should be fairly conducted.

The CHAIRMAN. That's right. And it seems to me——

Senator BERRIOS. Yes, I understand the point now. Of course, we will be glad to consider that suggestion.

The CHAIRMAN. I think we need to think this through. It is not the most central thing in your whole proposal, but it needs to be well thought through as well as jurisdiction of the courts.

Senator BERRIOS. No problem.

The CHAIRMAN. I would think in jurisdiction of the courts just offhand that it would seem to me that an action once commenced in the Federal courts ought to proceed in the Federal courts with a requirement of full faith and credit of Puerto Rican courts of that judgment, and an action commenced in Puerto Rican courts involving American nationals commenced before the thing should be entitled to full faith and credit in American courts. That way you don't have to stop litigation which has been going on for two or three years and recommence it, and then you've got problems with what you do with the statute of limitations.

Senator BERRIOS. I think those are very, very pertinent considerations, Senator, and we will be more than glad to consider all those questions.

The CHAIRMAN. All right. Professor, why don't you work with us?

Professor GORRIN. I think that is exactly what we have in mind in the proposal in its present version. Maybe what you are suggesting is that we include some language that will make it even clearer than it is at the present time. And I'm sure we could work out some language to that effect.

Senator **Berrios**. Or if something has to be changed in this procedural matter, we have no objection whatsoever. We just think the line of questioning talks very well of the seriousness which is this process being conducted on your part and on ours.

The **Chairman**. We will continue to work on that. I don't think there is any disagreement on that. We both want to go to the same place. We ought to just try to make it as clear as possible.

Senator **Berrios**. Fine.

The **Chairman**. Nothing can be more difficult or protracted or vexatious than election disputes. And to the extent that we çan get those in one clear place of jurisdiction with a final judgment rendered as quickly as possible by a fair tribunal, the better off we will be.

Senator **Berrios**. For all parties.

The **Chairman**. And I would think that a commission—a commission worries me because they don't have rules of procedure, and how do you enforce the results? And I would think that on the question of validity of the election, that some form of Federal court——

Senator **Berrios**. We can use the commission for certain issues, and for the electoral votes, we can use another mechanism like the ones you have proposed or another. I think we can get our minds to meet on that.

The **Chairman**. Let's turn to the most difficult thing, it seems to me, or one of the more difficult things. Let's talk about citizenship and emigration. Have you had a chance to look over that memorandum?

Senator **Berrios**. We have, and it is a very interesting memorandum. We had a long discussion regarding this matter. We compared notes between that memorandum and our memoranda. I think Senator Martin, through his expertise in administrative law and other types of interpretation, will be the person who will direct himself to this issue.

But before giving the word to Senator Martin, I must say that a very interesting thing has come up through the existence of this memorandum. And it is the whole issue regarding American citizenship and the question of whether the American citizenship which Puerto Ricans now have is that of the same character of the citizenship which American citizens in the United States have. That is the Fourteenth Amendment citizenship vis-a-vis the other type.

If the memorandum were correct and if it were interpreted that way by a court, then that would have implications not only for our proposal, which after all is a proposal made upon the issue of assuming the contrary, you will have enormous implications for the present commonwealth status of Puerto Rico because what is said about independence and citizenship could be said about citizenship in commonwealth status. So, the implications of that memorandum are very serious, indeed, for the whole issue of American citizenship.

Our proposal of dual citizenship, as Professor Martin will explain, was based upon the supposition which might be right and so accepted by courts that there is no way that citizenship can be taken away from Puerto Ricans who have citizenship now. But if that were not so and there would be some caveats to that, then what is said regarding citizenship under independence can be said regarding citizenship under commonwealth.

So, what we are really talking about is the real permanency of citizenship of the United States in Puerto Rico whether under the commonwealth or the republic. And I think that is a very important issue.

The CHAIRMAN. I can understand why that would be a conclusion that would spark a lot of debate probably as part of this whole thing. However, it seems to me—and I haven't reread the memo for this hearing. I should have. I remember it was quite a complicated statement of different origins of citizenship.

I believe that we could come up with a proposal here which would say upon the proclamation of independence, that dual citizens would have a period of time within which to make a choice. It has to be a reasonable time, reasonable circumstances, and that choice would be recognized by the courts. I think that is so regardless of——

Senator BERRIOS. Of status.

The CHAIRMAN [continuing]. Regardless of whether this memorandum is correct. We have never done this sort of thing before, and I think the courts would recognize the validity of it because citizenship involves rights and it also involves responsibilities. I can't imagine an independent Puerto Rico where the United States seeks 20 years later to draft citizens of Puerto Rico to serve in some Viet Nam. Let's hope we never have another one. I can't imagine that, or taxing citizens of Puerto Rico who haven't lived in the United States for years and years, or restricting their right to travel or doing a lot of other things. If you are independent, you are independent.

Now, you ought to have a right to choose.

Senator BERRIOS. Senator, I think that way of analyzing the problem is basically correct, but I think this is such a delicate issue that Senator Martin should leave for the record and for your knowledge what our conclusion of the whole analysis has been regarding the issue of citizenship after having read your memorandum.

The CHAIRMAN. Yes. Senator?

Senator MARTIN. Mr. Chairman, Senators, I think that I should perhaps first just very quickly prologue my comments by sort of remembering Senator McClure's words yesterday in another context, that this is in a sense a problem that the United States has created in its relationship with Puerto Rico and that it now is a difficult to one to extricate ourselves from. As you know, U.S. citizenship was granted to Puerto Rico in 1917 against the express wishes of the only elected body of the Puerto Rican people at the time.

And it was an express policy on the part of the United States to contrast its policy with the Philippines the year before. The United States had said the Philippines is going to go on its way to independence. That is our policy. In the case of Puerto Rico, the policy was that Puerto Rico was to be presumably forever a possession of the United States, and that is why citizenship was granted.

So, now when we drafted our proposal, what were we attempting to do when we drafted our proposal and our sections concerning citizenship? We wanted to make it clear that Puerto Rico as a republic would not discriminate against Puerto Ricans because of the fact that they were American citizens. We wanted to make it clear to the Puerto Rican people that after this long, arduous and complicated historical process, that it was not the Puerto Rican Independence Party's disposition to put people up to a Hobson's choice by saying if you want to be a full citizen of the republic of Puerto Rico, you have to abdicate your American citizenship. We thought it was our responsibility and we still think it is not to pose the question of becoming a citizen of the republic of Puerto Rico in such terms that would in my opinion tend to sort of ignore the reality of our past historical process.

I then examined very carefully the memorandum prepared by the Congressional Research Service on this matter, and it is a memorandum that concludes that the citizenship of the Puerto Ricans who are citizens of the United States by virtue of having been born in Puerto Rico is probably citizenship of a legislative nature. That is it is not Fourteenth Amendment citizenship.

The matter becomes a little more complicated because I was surprised not to find in the memorandum a reference to the Nationality Act of 1940 which says—and there are doubts about its legislative history—that people who are born in Puerto Rico shall be considered for purposes of citizenship as having been born in the United States. Does that then mean, I query, that people born from 1940 on in Puerto Rico are Fourteenth Amendment citizens? I don't know. That might create a further complication of two categories, those born between 1917 and 1940 who, according to the memo, would be simply legislative citizens, those born after 1940 and up to the point where that Nationality Act is derogated who would be Fourteenth Amendment citizens, not to mention other complications.

Do those Puerto Ricans who might be in the position of losing American citizenship then seek to become naturalized United States citizens? I don't know what would happen if a million or a million and a half Puerto Ricans suddenly sought to become citizens by naturalization such as to assure that they would become Fourteenth Amendment citizens.

I think this is an incredibly complex problem, and that the important issue here, if I dare say, is not really what are the legal and constitutional possibilities or extremes or limits of congressional action in this matter. It think this is essentially a very important political question. And although it may be true, after the lawyers sat down and ironed it out, that there is a good chance of the U.S. Supreme Court reaching the conclusion that the memorandum reaches, putting aside now the problem of the Nationality Act, that would simply be a theoretical determination of what are the limits of congressional power concerning citizenship of Puerto Ricans. But I do not think that that extinguishes the problem of what the political solution to a political problem should be.

That is why we are proposing a scheme in which U.S. citizenship is not incompatible with Puerto Rican citizenship in the republic hoping to open the debate or the discussion on some sort of sensible dual citizenship arrangement that recognizes the complexity of our history, that recognizes the fact that it was originally a citizenship by imposition, and that recognizes the more complicated fact that this is the first time that the United States is dealing with the problem of making an independent nation of what was a territory that has the problem, if you want to call it that, that the people who live there are American citizens and, after all, as the memo indicates, a citizenship of a legally dubious nature in terms of the possible limits of congressional action.

So, I think that even if the memo were correct and even if one interpreted the 1940 Nationality Act as not creating Fourteenth Amendment citizenship for those Puerto Ricans born after that, I think that that would simply make a legal point, but I think it doesn't tell us much about how we should deal politically with the question.

The CHAIRMAN. Well, I agree. I think it is a political question.

As I read these cases—and I have looked back over the memo now—they say at the very least that the whole question is clouded, that the Supreme Court is severely divided. And in my judgment, I have no doubt that a legislative scheme which gave the people of Puerto Rico the choice would be upheld by the court. Would you not agree that it is very likely that the court would uphold that kind of proposal?

Senator MARTIN. Yes, Senator, I am sure that the courts might possibly uphold it. I am simply posing the question that beyond the prediction of what a court would do at a given time, would that be the kind of political arrangement that best serves the interests of both parties in this process.

The CHAIRMAN. As I said in my opening statement to these whole proceedings, each one of these statuses has its own advantages. And each one of the three groups is seeking the maximize the advantage, and I can understand that. That is exactly what I would be doing.

It seems to me it is inconsistent with independence to have dual citizenship. A country owes to its citizens the right of protection, all of the rights. The Fourteenth Amendment and the Fifth Amendment says that citizens are entitled to certain rights. And we send our ships to protect citizens who are being endangered around the world. We also expect them to pay taxes, and they are subject to the draft, all of those things. And I just think it is inconsistent with independence to say that the United States, well, we're independent. We have the right of self-determination, but we still look to big brother to the north to protect us. We'll serve in the army. We'll pay taxes. We'll do all these things.

Senator BERRIOS. You are confusing us with the Estadistas and Populares. [Laughter.]

We agree fully with you. We just put our suggestions there because of U.S. laws and in a transitory manner in any case, those citizens who have been born United States citizens. From the day of the republic on, citizens who are born in Puerto Rico are Puerto Rican citizens. If the United States wants to consider them American citizens, that is the problem of the United States.

But what I want to make clear is, of course, you are right in what you are saying. We want Puerto Rican citizens in Puerto

Rico. The trouble comes in with American memos of constitutional law because of the inextricable fact of the decision made in 1917 regarding Puerto Rico. But I agree perfectly with you. What we have to find is a way to deal with this matter in that transitory period from now until the time where Puerto Rico can be fully constituted as a republic, and that takes more time in one area than in other areas.

But I agree perfectly with you. We do not aspire to a republic of only citizens of Puerto Rico and those people who are citizens of another nation are citizens of another nation by virtue of the laws of the other nation. It was that fact which we faced in our memo.

Now, there seems to be some doubt as to whether that can be upheld in the U.S. courts or not. Well, that is a decision you have to take when you draft the law.

The CHAIRMAN. Suppose we provided that those who are presently dual citizens shall have a period of time in which to make an election as to citizenship.

Senator BERRIOS. More or less we have that procedure in our position from another standpoint, but there will be no objection to that. Of course, not.

The CHAIRMAN. What would be an appropriate time in your view?

Senator BERRIOS. I think our staff would have to iron out the time limit regarding other comparisons. But I think a reasonable time could be found, and all interested parties could come to a meeting of the minds there.

The CHAIRMAN. Why don't we work on that?

Senator BERRIOS. Fine.

The CHAIRMAN. All right. There is a 25 year exemption from emigration. This subsection provides for a 25 year period in which citizens of Puerto Rico can freely enter the United States subject only to nondiscriminatory limitations, communicable diseases, et cetera.

I think clearly we ought to have some kind of exemption period related to certainly this election. I think the election period as to citizenship could be shorter than the—someone who elects—well, actually if he elects—this really is the same issue I guess, isn't it?

Senator MCCLURE. No, not quite.

Senator BERRIOS. Not exactly the same issue.

Senator MCCLURE. Not the same. And I would agree with the Chairman from my own standpoint that perhaps 25 years is a longer period than seems to me to be warranted under the circumstances. But it needs to be a period with some limits that would start at the date of the proclamation and not at the date of the initial election.

Senator BERRIOS. As a matter of fact, we thought 25 years is short compared to what has been in other instances. That is why we put 25 years. In many other relationships between ex-colonial powers and colonized people, it is 50, 75 years or forever. We are limiting it to 25, but we have no objection to 22 or 20, or we can sit down and talk about it. No problem.

The CHAIRMAN. I think we can work that out, but those who fail to elect and want to emigrate later would emigrate as ordinary emigres.

Senator BERRIOS. That's correct.

The CHAIRMAN. I do not think that is going to give us any problem.

The next item would be defense.

Senator BERRIOS. Now, we are getting down to business. [Laughter.]

Senator MCCLURE. Before leaving that other question of the free entry, I think you would agree with us that there is also a need to cover the question of people not citizens of Puerto Rico initially entering the United States through Puerto Rico.

Senator BERRIOS. Definitely, Senator, without any doubt, that has to be covered fully.

The CHAIRMAN. On defense, you provide for the establishment of a special task force to negotiate the agreement called for in B which closes Puerto Rico to all foreign military forces and calls for a separate agreement for the gradual transfer of U.S. military properties.

As I think you know, I want to work out a proposal that is reasonable and that gives the Puerto Ricans the right to choose independence and real independence and real self-determination. But I think we have a model in some of our Micronesian negotiations that we could use in Puerto Rico, and they provide essentially for, first of all, deniability—no foreign power can come in—and secondly, base rights which are very carefully laid out.

And with respect to those base rights—we haven't talked to Defense yet. We have a briefing set up, but I think something that could derail our efforts to give you a real right for independence might be defense. So, I know you will to work with us. I know you don't want to go into the Cuban orbit or anything else. Let me give you the opportunity to explicitly say so, so that all my colleagues will understand that.

Senator BERRIOS. Sir, let me tell you that I understand your introductory paragraph. What you say is that there are some people that in others, no, but in this area will all definitely play big brother. And it is natural because you have your interests which you conceive as such. All of you know our position we are in these matters internationally and our abidance by the democratic philosophy of life.

And the problem is I think not in our philosophy or in your philosophy, but in making arrangements that would guarantee that both of our philosophies can be respected. We are more than willing to speak about this matter of defense.

We don't think the comparison to the Pacific area is strictly applicable, but there are some issues there which can be brought to the discussion in the Puerto Rican matter definitely.

The CHAIRMAN. Well, let's begin with deniability. Can we work out an arrangement whereby we would be fully guaranteed that this could not be a base for hostile foreign governments?

Senator BERRIOS. Yes. For example, that is where the difference comes. Of course, neither for anybody else nor for you after you leave. It's deniability for everybody after the bases leave Puerto Rico because we aspire to a fully demilitarized Puerto Rico. So, of course, the principle can be used, but it has to be used within Puerto Rican circumstances.

The CHAIRMAN. But would you recognize that the United States has vital defense interests in Puerto Rico?

Senator BERRIOS. I think we not only recognize that, but we explicitly, by saying here that the bases will be there during a transition period recognize that that is so, that that happens. It is not a matter of one's willing that that happens or not. It is not a matter of one's will. We would like no bases from today on. That is what we would like and no bases from anybody, but that cannot be achieved. Since it cannot be achieved, we have to deal with reality, and that is the purpose of this defense part.

It happens something similar to that of transfer of powers I spoke about yesterday. We have to find a way out of this impasse. And we are willing to sit down and find that way out before Defense comes in. Or if Defense wants to be in the talks, even better. I would love for them to be in the talks.

The CHAIRMAN. This is one thing that must be worked out in advance. To say that we will grant independence and then we will come in and work out something—we have to work it out in advance.

Now, frankly, I do not think that an American presence there should be too intrusive. Roosevelt Roads, after all, is down at the end of the island in an enclave, and I'm sure that that is the most valuable. There are other military facilities there. We could work those out. The presence of military facilities may be intrusive to some extent. It also provides a lot of jobs. And in an independence mode, there would be lease payments, or the transition funds. You wouldn't be entitled to huge transition funds, and say you shall have no presence.

So, I hope you will help us in working out these defense arrangements because, frankly, I don't speak for you, obviously, and I'm not attempting to, but I cannot understand why that would be that difficult. The main thing you want is independence, self-determination, autonomy, all of those things, decolonialization.

Senator BERRIOS. I agree with you, Senator.

The CHAIRMAN. We still have a base down in Cuba.

Senator BERRIOS. I think it is very possible for our staffs to sit down and to find the language which would be mutually acceptable regarding this matter before independence.

Senator MCCLURE. Mr. Chairman?

The CHAIRMAN. Yes?

Senator MCCLURE. I agree with what the Chairman has said, and I certainly understand your approach to the problem. It is a pragmatic approach recognizing that this must be negotiated and settled. I have no doubt at all of your commitment to demilitarization. But under independence, your government could change, and your government could change with a desire for a foreign military presence which would be absolutely an anathema to the United States.

Based upon your current position, we have no problem with the exception of Roosevelt Roads and the defense posture which is vital to us in our ability to protect vital interests and to carry out treaty obligations of the United States Government. We have to find a way in which we can make foreign military presence denial a permanent feature of the relationship, and I think that comports with what you want. It comports with what we want.

Senator BERRIOS. I agree with this. This would have to be ironed out. This is so important that if we turn back the clock of history, that is why you came in to start with. That is why some want to stay there still. It is a crucial matter. But I am sure we can sit down and find a way out which is mutually satisfactory, and we are more than willing to do that.

The CHAIRMAN. I think what we need to do, first of all, with respect to Roosevelt Roads and other military facilities—I do not know what is important and what is not, frankly. Roosevelt Roads may not be as important as I think it is.

Senator BERRIOS. I was going to say that.

The CHAIRMAN. But we ought to guarantee Roosevelt Roads for a period of years, and I would think a long period of years. You will be getting transition funds in the meantime. We have to work out the transition funds, and then thereafter provide for negotiation as to the amount. That is what we do with the Philippines. That is what we do with all of these independent countries. And we shouldn't have a problem with that.

Now, I would think we would need deniability, the same kind of language that we have in the Micronesian. All that says, in effect, is that no foreign power may go in and that we determine what is an intrusive foreign power. The reason we had to come up with that kind of language, the concern was that in one of these specific islands, that you would have Soviet trawlers who would want to come in and establish a fishing village and actually they wouldn't be fishing at all. They would be these well-known Soviet trawlers that are really communications vessels.

Senator MCCLURE. And just a few submarines to track the fish.

The CHAIRMAN. That's right.

Senator MCCLURE. And so, we had to be able to determine what was proper and what wasn't. And it has given no problem at all. But I think we need that kind of deniability language.

And we would need to work out some things like overflight rights and ability to use the island in case of a regional conflict. In other words, let's say that Noriega invades the Virgin Islands.

Senator BERRIOS. Could we please use another example, because my brother here is called Noriega also. [Laughter.]

And he dedicates himself to putting corruption away in Puerto Rico. [Laughter.]

The CHAIRMAN. As I say, I can't think through all of the things that the Department of Defense is going to say are absolutely essential, but I hope you will work with us on that because there is nothing that can kill an agreement like being inconsistent with national security. That is the word around here, and I don't want DOD to come in and say, well, look, we can't even use the air base to land if we have war in the Caribbean.

Senator MCCLURE. Mr. Chairman, I think they recognize in their draft and the presentation that you would have the obligation of the real treaty as an example.

Senator BERRIOS. I was just going to say that as an example, so it is open for that.

I think it is very good, Senator, very positive for the discussion and for us and for the whole process that we have some explicit statements now publicly of the type of thing that we will have to direct ourselves before the accord is reached. Of course, in certain ones of these areas we have different ways of looking at the problem or different ways of solving the problem, but all these issues should be met head on and solved. And I think that is what we are talking about. And I am sure in the following weeks we can sit down and try to work out each one of these issues.

For example, Senator McClure has pointed out specifically now some of this might be included already or can be included by way of reference in the real treaty. So, there is no need but to specify a little more in that area. But in other areas, one will have to be more specific.

We are on the way to talking about this matter now. I think it is very important that we know what you understand the vested real interests of the United States are regarding this matter, and then we can say what we are willing to agree on that.

The CHAIRMAN. I do not know yet. We haven't had that briefing yet from DOD.

Senator BERRIOS. That will cover more things when you have the briefing.

The CHAIRMAN. The kind of attitude which you have I think will make it easy to work it out.

Senator BERRIOS. Fine. Was this the hard part? [Laughter.]

The CHAIRMAN. Well, that and taxation and money are the hard parts.

Senator BERRIOS. Well, those are our vital interests now.

Senator MCCLURE. And your vital interests are certainly important ones from our standpoint as well. I know that you recognize that there are nearly 27,000 jobs involved in Puerto Rico and that there are about $760 million a year that flows into the Puerto Rican economy as a result of our military presence. And I am certain you don't ignore that either. They are too important to you. So, I am sure we can work it out.

And I appreciate very much your statement that our requirements it needs to be clearly understood and what your requirements are; and let's see if we can't make those mesh so that there is a clear understanding on both sides before we undertake this.

Senator BERRIOS. You will find, Senator, I am very glad about this question and answer. But you will find something with us: we will always tell you what we believe in. And I think you have been very honest in your questions in telling us what your positions have to be. This the only way to find a solution to this whole problem. We can't be speaking one thing to you here and saying something else to the people of Puerto Rico and another thing to the U.N. No, we cannot speak with a forked tongue.

The CHAIRMAN. I am very glad that it looks like we can work out this defense because that could, as I say, be the most difficult thing.

Now, with respect to trade, you provide for an open market for a period of 20 years. Puerto Rico may impose trade restraints on goods entering Puerto Rico from the United States, but we have an open market treatment of Puerto Rico with the United States until independence and then provides that for 20 years the United States will maintain an open market for Puerto Rico.

Senator BERRIOS. Shall I explain the basis for that, Senator?

The **Chairman**. Yes, please.

Senator **Berrios**. First of all, we have looked at comparisons from other areas which have been under similar processes. The most typical example of these are the arrangements made between the European Common Market, which has been established through the Treaty of Rome and which includes all consumers in Western Europe practically. And some of the nations which were previously colonies of one of these nations have what is called one-way free trade forever.

What is the purpose of that one-way free trade forever? It means that they can start developing their nascent industries, but then they will have a guaranteed market for the export products. It is a way of helping the development of these nations which, after all, I must remind you, is one of the purposes of U.S. foreign policy which has already been done so by other nations.

We, on the other hand, are under another stage of development. For example, 80 percent of all products coming into Puerto Rico from the United States are raw materials or intermediate products which it would be absurd for us to impose any tariff barriers because what it will do is to put up the cost of our final products. So, to start with, this doesn't apply in practice to 80 percent of U.S. exports to Puerto Rico. So, we are talking only about 20 percent of U.S. exports to Puerto Rico as a possibility of us protecting them.

We do not want to protect—and I must state that as a matter of political and economic principle of our beliefs. We do not want to protect permanently any type of industry. We just want to give it a fair chance under the nascent industry argument so that we can protect our own. And once they are in a healthy state, they can enter into competition.

So, to start with, it doesn't apply to 80 products. Second of all, it is the type of arrangement that has been made in an even more open manner and forever by other industrial nations. And it is much better for the development of the Puerto Rican economy than any type of arrangement that could be found under the present system. That is why we propose the arrangement.

The **Chairman**. How would this impact on other areas such as the Virgin Islands? For example, the rum business I know is a big producer of income for both the Virgin Islands and Puerto Rico.

Senator **Berrios**. It would have no real impact on the rum business. Very little impact.

The **Chairman**. So, the present exemption from excise taxes of rum that Puerto Rico has——

Senator **Berrios**. I must make a point. We do not pretend to have that. I refer to Senator McClure's opening words yesterday. Our position is not only revenue neutral, our position is revenue beneficial to the United States. We propose a situation whereby things start phasing out, so you would have to contribute less and less to the Puerto Rican treasury.

And one of the points where right away we say—you know, when we talk about foreign aid to the republic of Puerto Rico, we do not include the excise taxes to Puerto Rico.

The **Chairman**. Now, with respect to taxation——

Senator McClure. May I talk about the trade issue for just a moment? Because we have a long history of our negotiations between this committee and other committees of the Congress.

I don't want you or anyone else listening here to depart this hearing under the illusion that this committee is going to say what that provision is. The Finance Committee took very strong actions with respect to the conditions we established with respect to the Northern Marianas, with Guam, with the Micronesian Islands in each of the separate compacts, as did the Ways and Means Committee in the House.

And I know from their attitudes which are expressed in those negotiations that they are probably going to be tougher negotiators than this Committee on behalf of the United States trade interests. And I suspect that what you will find is that they will insist that you be treated under headnote 3(a), which is a term of art with respect to that body of law which deals with these trade relations matters. I would guess you will end up somewhere close to what was done with Micronesia and Guam.

Senator Berrios. Senator, we must insist, first of all, that this is better than revenue neutral. It is revenueless towards the United States treasury. And secondly, we are speaking of a transitory basis.

Senator McClure. I understand that. As I indicated earlier, I think you will find the other committee tougher to deal with than this one in that regard, but I just say that for the information of all those who are tracking these events and wondering what the future may bring us.

Senator Berrios. We will tell this committee that the alternative is to have what they have now with more cost every year, per secula seculorum.

The Chairman. Now, in taxation, Senator, I can tell you that a 25 year phaseout on section 936 will not fly in the Congress. You have it. The statehooders also have it. That is too long.

One question. Do you have a tax expert?

Senator Berrios. Yes, we do. We have a Harvard tax expert here, but for free. [Laughter.]

The Chairman. In spite of that, he is good at taxation.

Senator Berrios. Yes. [Laughter.]

The Chairman. There is a provision here, the same that the statehooders have, providing for a 10 percent phaseout, 10 percent a year for 10 years. Can 936 be phased out on a percentage per year? Does that work mechanically?

Mr. Negron. First of all, let me tell you that with respect to the extension of time flying in Congress, there are precedents close to what we are asking for. In those same Micronesian examples that you are mentioning, 936 was guaranteed for 15 years in its full extent to Micronesia, and it is also in the Palau agreement that is ready for execution.

With respect to the phaseout, the treasury every time that it has requested that 936 be eliminated, it has never said that it should be done all of a sudden. It has always said that there should be a careful phaseout.

What we argue is that the 10 percent a year rate of corporate tax in the United States—10 percent of the regular rate every year would apply to the remittances of income back to the United States because under U.S. internal revenue law and under the treaties signed by the U.S. with other foreign nations, the income of American subsidiaries established abroad is not taxable by the U.S. until that income is repatriated back to the parent company or to the shareholder in the United States.

For that matter, keeping section 936 in the books within the context of an independent Puerto Rico is not any more costly for the U.S. treasury than treating Puerto Rico as it treats any other foreign jurisdiction because when that income is repatriated back to the United States, it is subject to a foreign tax credit for all taxes paid in the foreign jurisdiction.

Now, because most of our foreign investment would be expected to come from the United States, at least during the initial years of the republic, we would most likely set our corporate tax rate at 34 percent, which is the same tax rate to which those dividends would be subject to taxing in the United States, in order to offset by means of the foreign tax credit any tax that would otherwise be payable back in the United States. So, the U.S. treasury receive no revenue even if section 936 is not in effect with respect to Puerto Rico, even if Puerto Rico is treated like any other foreign jurisdiction.

What section 936 would permit Puerto Rico during those years is to continue providing the local tax incentive by not having to tax those companies at 34 percent which is at this point in time a very important incentive for investment in Puerto Rico.

We think it has been unhealthy for Puerto Rico to have to rely so much on that only type of incentive, but what we are asking is a reasonable period of time during which we can keep 936, but it also means that we can begin to exploit the other avenues of economic development that would be open to the republic of Puerto Rico as an independent country so that we don't have to continue relying on section 936 in the future.

The CHAIRMAN. I understand those arguments as to why you want to keep the incentive, and 936 is clearly a very powerful incentive. And I have helped fight battles on Puerto Rico's behalf for 936.

My question is not, though, whether it should be or what the period of time. My question is one of mechanics. Can you phase out 936 10 percent a year, and where is the language? Would this language do it? It just says phases out at 10 percent a year.

Mr. NEGRON. Let me tell you how this would work out.

In year 16, if the U.S. regular tax rate is 34 percent as it is today, then in year 16 all remittances of profits from Puerto Rico into the United States by those companies would be subject to 10 percent of that 34 percent rate. That would be a 3.4 percent tax.

In year 17, it will be twice that because we will be 20 percent of the regular tax rate. Those remittances will be subject to a tax of 6.8.

In the third year, you are going to add 3.4 more, okay?

So, on the year 25, those remittances are subject to 34 percent, which is 100 percent of the U.S. regular rate, which is the same treatment given to all other foreign nations under U.S. tax law.

The CHAIRMAN. Mechanically it can be done 10 percent a year.

Mr. NEGRON. We think so. If you have any doubts, we can consult with the Treasury Department or the Finance Committee, but we think this would work out.

The CHAIRMAN. Well, we have asked the Finance Committee for guidance, and they have indicated they are too busy right now dealing with reconciliation and other things, and that they in due course will focus on this.

Senator MCCLURE. Mr. Chairman?

The CHAIRMAN. Yes?

Senator MCCLURE. Again, trying to anticipate what they may well do, I would invite you to look at Public Law 48, Trust Territory, the section 404, and the Title IV of the Compact of Free Association in which the Finance Committee and Ways and Means Committee insist upon a provision that allows for adjustments where they are uniform and for offsets. And I just commend that to you for your reading as a pattern which may well emerge.

Senator BERRIOS. Excuse me. Could you repeat the reference?

Senator MCCLURE. It is U.S.C.A. Title 48, section 1681.

The CHAIRMAN. If you would give us the language. We can always plug in the percentages.

Senator BERRIOS. More than glad to.

Mr. NEGRON. We think that the language is in section B.

The CHAIRMAN. And you think that language will work. It doesn't need to be expanded any.

Mr. NEGRON. We think so, but again we are open to talking about it. It's just a technical matter. I think it will work.

Senator BERRIOS. We can draft other language which is more specific than that and then bring both alternatives. There is no trouble with that.

The CHAIRMAN. Well, we would probably need that language Senator McClure just referred to, at least as a starting point.

Senator BERRIOS. Fine.

Senator MCCLURE. I want you to look at that and tell us your reaction.

Senator BERRIOS. We will.

Senator MCCLURE. I'm sure we will hear from you.

The CHAIRMAN. And, of course, I think you understand that the phaseout period would be much faster than 25 years. How much faster is a judgment that we initially may make and then the Finance Committee ultimately will make, but I think they would want to have a much more rapid transition. And probably any aid for Puerto Rico would probably tend to come in another fashion rather than 936, wouldn't you think, Jim?

Senator MCCLURE. Yes. And that is in part what was done under the section I made reference to, to provide for a transition from the tax provision to a different form.

The CHAIRMAN. Do you understand how that works?

Senator MCCLURE. No.

The CHAIRMAN. We are mystified as to how it works.

Senator MCCLURE. We don't know yet how it will work.

Might I ask a question at this juncture about some language that appears on page 35 of the bill? You have the bill before you. Refer to line 22. You are talking about the establishment of enterprise, and the term used there is "permanent establishment situated therein." What is meant by the term "permanent"?

Mr. NEGRON. It is not an affiliated corporation but, say, a branch or an office or a factory. It is a common term in all treaties, in all international tax treaties, including tax treaties signed by the United States with other nations. It is common tax language. It refers to those items.

Senator MCCLURE. So, you make reference to that term as it is used in other——

Mr. NEGRON. Of course.

Senator MCCLURE. Thank you.

The CHAIRMAN. Now, with respect to currency and finance, you would issue your own currency while accepting U.S. currency for 10 years. No problem that I can foresee there.

Now, with respect to deposit insurance, transferring the value of all stock held by Puerto Rican banks in FDIC, Federal Reserve and Federal Home Loan Bank system and continue current loans until maturity, I think banking and finance experts will have to look into that. But obviously our FDIC and particularly our FSLIC is in some shambles. I don't know whether there is anything there except a huge debt. We will give you your share of the debt. [Laughter.]

Senator BERRIOS. We are willing to assume the responsibilities also.

Senator MCCLURE. But not of the national debt.

Senator BERRIOS. No.

Senator MCCLURE. They didn't vote for that.

The CHAIRMAN. I think that would be very difficult. We better have our banking experts—is anyone a banking expert here?

Senator BERRIOS. He is our economist.

The CHAIRMAN. How would you physically transfer this stock?

Professor PARRILLA. This is a period in which after the proclamation of independence, the capital or equity contributions that those banks make to the different systems is in proportion to—the deposits are sovereign to Puerto Rico. This has to be done after an actuarial study on the——

The CHAIRMAN. Much of that is, in effect, premiums for the cost of insurance.

Professor PARRILLA. Premiums, yes.

The CHAIRMAN. And some of that goes into reserves and some is just—I mean, if you paid out X percent of your reserves last year to FDIC for the cost of insurance, not all of that stays in the fund and accumulates. A lot of it was paid out by FDIC last year to save failing banks.

Professor PARRILLA. Yes. That is why we are saying that an actuarial study has to be done in order to determine the right amount that has to be transferred.

The CHAIRMAN. I think there have been some practical problems in trying to extend Federal loans and loan guarantees in Micronesia.

Senator BERRIOS. As long as they are of that nature, economists, lawyers and bankers can all agree.

The CHAIRMAN. Well, I think so, but that is one of those things we need to agree on in advance because we don't want to be an independent country and then have people coming to you and saying where is their insurance and there not be any there.

Senator BERRIOS. I assume, Senator, that this would have to be done exactly as Professor Parrilla says, before the republic, of course.

The CHAIRMAN. Now, the guarantees provided by the government of the United States to investors in the secondary market for loans, particularly Ginnie Mae and Fannie Mae and the Federal Home Loan Mortgage Corporation and other United States Government instrumentalities shall be maintained for Puerto Rican originated loans until maturity.

The loans would not have precisely the same value after independence. They might be more valuable or less valuable because the value of the loan would be determined by the ability of the people to pay and the ability to enforce the loan. And you might have a drastically different system of enforcement.

Why can't this guarantee be assumed by a new corporation, provide for a period of transition during which this would——

Professor PARRILLA. This can be an alternative, create a new corporation for that purpose. However, the purpose of this proposal in regard to Fannie Mae, Ginnie Mae and Freddie Mac is to try to keep access to the secondary home market, in home insurance market in the United States after independence.

Senator BERRIOS. For the same reasons that you want the bases there, we want the market here. [Laughter.]

The CHAIRMAN. Well, I know. Obviously we would be giving some benefits to Puerto Rico, but it seems to me we want to unmesh the governmental structure and have the benefits be clean and identifiable. I just haven't thought through all the problems.

Senator BERRIOS. That is why this has to be understood as a transitory step. This is to untangle.

I have sometimes compared this process to Siamese twins. One is a very strong, large, big Siamese twin. The other one is a much smaller twin. You just can't go with a machete and cut them apart. You have to have very careful surgery, what we are staring to do here today, until the transition comes, and then they can finally become friends and not be in permanent conflict with each other.

The CHAIRMAN. We have asked the White House to set up a task force, and they need to give us advice on these things. And we want to do it in the right way. And I hope they will get around to setting up the task force soon.

Under your provision for public debt, the republic of Puerto Rico would assume its debts, liabilities and obligations, but two exemptions would be extended. Interest payments on debts incurred by the commonwealth would be exempt from U.S. tax presumably until such debts are extinguished.

Senator BERRIOS. That is what happens now. And we would propose that that proviso be kept for a transitory period also as a way of untangling the web.

The CHAIRMAN. And then you also provide interest payments on debts incurred by the republic would be exempt from U.S. income tax for 25 years. That is new debts?

Professor PARRILLA. New debts, but mainly debts that are incurred in the process of renegotiation of debts. However, we would like to extend that provision to new debt related to the effort that the republic of Puerto Rico will be doing to increase and improve the infrastructure.

The CHAIRMAN. Well, to me the interest payments on debts already incurred, on those precise debts—not refinancing debts, but on those precise debts—I think is appropriate because people bought the bonds at a time when they were tax exempt. They ought to be able to rely on that. But new interest payments on debts, that ought to be the subject of negotiation between the new independent Puerto Rico and the United States.

Senator BERRIOS. It could be, of course, but this is a matter which could be solved beforehand. Remember in the measure that this type of incentive is granted, the Puerto Rican economy picks up in its development and thus makes the phasing out period even faster. We hope that if these tools are in our hands, we might even be starting to cut off some of the things beforehand.

The CHAIRMAN. But this is what we call a tax expenditure, and we place limits on that on our own corporations. And I can tell you it would not fly in the Congress to say Puerto Rico has an unlimited line of credit to float subsidized debt while in the United States they cannot.

Senator BERRIOS. I understand, but remember the argument is that, no, no, Puerto Rico now per secula seculorum has that. What we are proposing is that we finish that, and they are offering us to finish it off in 25 years in the full manner. And it has to be understood as a transitory period.

The CHAIRMAN. There are limits on what Puerto Rico can do right now.

Senator BERRIOS. Correct. Maybe it is with those limits, and maybe after the transitory period, then we can deal in another matter, of course, the regular way.

Senator MCCLURE. Mr. Chairman?

The CHAIRMAN. Yes.

Senator MCCLURE. Might I interject at this point?

Congress has been progressively limiting this kind of activity on the part of our own municipalities and states in this country. And I would agree with the Chairman that with respect to existing debts, existing treatment is probably justified from our policy standpoint. I am not certain whether that should be extended to a rollover of that debt into a refinancing of it. But I am very skeptical that you can expect that you will get better tax treatment on future debt for future enterprise than that which is extended to our own municipalities and states in this country.

Senator BERRIOS. I agree with you, Senator. Maybe we can go into a middle way and say those debts which are for refinancing instead of new debts.

This is an additional incentive for the picking of the republic, but it is not an extremely important incentive. So, of course, a middle ground can be found there also.

The CHAIRMAN. Well, I think what we ought to do on presently existing debts, Puerto Rico should—whether we include refinanced debts or not, I don't know, but you should not be given more favorable treatment than a state because the Congress has been ratcheting down year by year on the states and you shouldn't be exempt for a period of 50 years, for example, on existing debts.

Senator BERRIOS. No more favorable treatment than a state or a commonwealth I imagine.

The CHAIRMAN. In other words, that is for existing debts. Then we will have to consider about refinancing debts. And it seems to me future debts—that ought to be negotiated between Puerto Rico and the United States.

And Senator McClure says what the Finance Committee is probably the most important thing, but it would be my idea for us to take a first cut at it if for no other reason than to spur the Finance Committee into quicker action. We are not trying to raid their jurisdiction, but we can at least give them our own views of the matter.

Next is the vested rights and benefits. First you provide that those who have vested rights and benefits—I suppose those would be like Social Security recipients who are already receiving their benefits—that those will continue. I tell you what we better do is we better list those program-by-program. Clearly Social Security would be such a program.

Senator BERRIOS. Veterans.

The CHAIRMAN. Veterans. How about Medicare?

Professor PARRILLA. Medicare benefits, yes.

The CHAIRMAN. And then you have the problems—well, Medicare would probably need to be exempted from that at least in part because the Medicare providers who would then be Puerto Rican would not be under American law control for the amount of fees, the quality of care, all of those things which are now controlled by Medicare.

Senator BERRIOS. An exception can be made to that. That is no problem.

The CHAIRMAN. And Medicare is not something you pay into to create a fund as you do in Social Security.

So, we better identify those and try to be as specific as we can. Clearly pensions would continue.

Senator BERRIOS. Pensions, of course.

The CHAIRMAN. But if you can give us a program by program statement, and with respect to those programs, try to think through all the eventualities.

Senator BERRIOS. Of course.

The CHAIRMAN. For example, if you do mean to include Medicare, which I would think you would not, then how do you provide for all the rules and regulations?

And then with respect to those who have made contributions but are not now vested, such as a Social Security payor who has paid in for 20 years but is less than 62 or 65, and you provide that we pay the amount that they paid in plus interest. And how is that interest calculated?

Professor PARRILLA. I think that it has to be compounded from the time that the payment was made. We have to reach a formula that comes from an actuarial study. This is a place where an actuarial study will be very important. So, an answer to what percentage that will depend, for example, on the type of interest rates that were at that time. That will depend on investment of the Social Security system at that time. So, many things are included in that estimate.

The CHAIRMAN. Well, we need to be as specific as we can on that.

Senator MCCLURE. If I could ask that you provide us with a specific listing of the things that are important to you so that we can at least address your concerns and have a real meeting of the minds as to where you are coming from. We are now at the place where 43 percent of our Federal budget is involved in entitlements of some kind.

Now, there are some of those like Social Security, veterans' pensions, military and civil service retirement benefits which are very personal to the recipient and they are benefits which have been conditions of their employment. They are not granted as a matter of largess. They are granted as a matter of paid right. Certainly we want to protect those rights of individuals.

But there are some other programs which are entitlement programs which deal with the definitions of classes of individuals who are entitled to a benefit or a service. Those are quite different than individuals rights that have been paid for and earned and, therefore in my judgment, ought to be recognized as vested rights. They are subject to changes of statute in our country. They can be increased or decreased according to acts of Congress. In my view, that would occupy quite a different approach with respect to the vesting of those rights for any period of time in the future.

But if you would provide us with a list of your concerns, then we perhaps can discuss that a little further.

Senator BERRIOS. Of course. I agree, Senator, with you and with Senator Johnston, all the ones you have mentioned. And the ones up to now definitely should be included. For example, the payments in Puerto Rico for checks for food. We propose a mechanism whereby that is included in another matter, but we refer specifically to that issue. And we, of course, will make the list for you and detail each one of the ones in a very specific manner.

Senator MCCLURE. I would think, to get into your example, food stamps are probably not a vested right. We run into something else like access to veterans' hospitals. That is or is not a vested right, depending upon your point of view. But I think that is clearly on the line and ought to be discussed and understood.

Senator BERRIOS. That is correct. In our position we don't refer to food coupons as vested rights. You are right.

The CHAIRMAN. There are going to be big problems in working out, for example, identification of the employer's amount under Social Security. What do you do about the person who has worked 10 years in New York, 10 years in Puerto Rico and the difference in employer contributions? These are enormous problems.

Senator BERRIOS. Eventually we will have to negotiate a number when we see all that. Definitely.

The CHAIRMAN. Yes.

Then you have a 20 year transition period for economic assistance. During this time you would be entitled to a block grant being the value of programs or programmatic assistance extended currently or in the fiscal year preceding the proclamation, whichever is greater. And that would be food stamps, FDIC.

Senator BERRIOS. We ask in that section for those specific benefits in order for us to be able to reduce dependence from the United States.

The CHAIRMAN. Obviously a 20 year transition period would be longer than the Congress would give, but we recognize there has to be a transition period.

Senator BERRIOS. A shorter term than the European models, but Congress is another reality.

The CHAIRMAN. Well, it is one thing when you are talking about what you are entitled to by right, and another thing of what you would be entitled to by negotiation after independence.

Senator BERRIOS. I agree.

The CHAIRMAN. And you might be able to get more.

And I would think really that we would be better off here to try to specify an amount, go look at all those programs and just give us an amount.

Senator BERRIOS. Senator, we have discussed that point amongst ourselves, and I think you might very well be right. After we conduct all these studies and so on, maybe the most simple thing is to come out with a number. A round number is much cheaper than commonwealth and statehood.

The CHAIRMAN. Well, I think it would lead to much more clarity.

Now, you finally have a treaty of friendship and cooperation. Of course, we would like to do as much as we can in advance. There will have to be a whole series of negotiations which will be less than treaties. We would probably need to provide a mechanism for example on Social Security.

With respect to Social Security, I am again just thinking out loud now. Maybe we ought to try to get a cutoff date. Anyone who has paid into the system for X years continues on Social Security and Puerto Rico pays in. And if they haven't been on the system that long, then we make a block grant to Puerto Rico and Puerto Rico assumes the whole thing.

Senator MCCLURE. Mr. Chairman, may I make a suggestion at that point that is quite different than that? I don't know how acceptable it is.

We have a provision now that if a person under employment covered by Social Security, leaves that employment today, they are eligible for benefits when they reach retirement age. Rather than confronting the difficulty of your setting up a separate system and our confronting the difficulty of an immediate budgetary impact by a large block transfer of money, couldn't we alternatively allow people who are now covered by the Social Security system to in effect freeze their benefit level upon independence and then apply for those benefits in the ordinary course when they get to retirement age and be permitted access to the retirement system of the Social Security, the civil service retirement, military retirement as any other citizen of the United States is or would be who had left covered employment at a specific date?

Senator BERRIOS. That should be very seriously considered. At this moment I see that as a very reasonable proposition.

Senator MCCLURE. It avoids a huge transfer payment from the United States Government to the Puerto Rico government, and doesn't require you to set up a parallel system.

Senator BERRIOS. Since I trust my advisers in the economics so much, I say take it right away, yes. [Laughter.]

The CHAIRMAN. I think you have 40 quarters to get minimum benefits. And the question is what do you do about those who have worked less than 40 quarters?

Senator MCCLURE. If they leave covered employment in this country, they get nothing.

Senator BERRIOS. We hope we have enough development in the republic to give something of our own, but we can't expect for them to get more than—my economist friend says here half jokingly we are willing to accept U.S. treasury bonds for payment. [Laughter.]

Senator MCCLURE. That has budgetary impacts. [Laughter.]

Senator BERRIOS. Yes, I know. That's correct.

The CHAIRMAN. Dollar for dollar—is budgetary authority, not maybe as outlays, but as budgetary authority.

Well, I think Senator McClure's suggestion is a good one, that is anybody who is vested is considered to be vested and paid in the ordinary course as if their employment was terminated at that time. Those who have less than 40 quarters would also be treated as someone who has left employment.

Well, gentlemen, this has been a very productive session. I think we have no difficulty in terms of attitude. You have shown a real willingness to do more than meet us halfway. You have shown real innovation in some of these programs.

Now, at the same time I must point out that all the problems are not worked out, and that is not because of the unwillingness of us or you to do so but because of the sheer complication of it. And, of course, the critical questions are not answered, that is, what is the phaseout period for 936 and what is the amount of the grants and what are the other provisions. Obviously, it will not be as long as you think, and obviously, the United States does not want to remake Puerto Rico into the poorhouse of the Caribbean as it was before the bootstrap program was begun.

At the same time you know full well that independence means local responsibility and these benefits would be fairly rapidly gone. I mean, in historic terms they would be fairly rapidly gone. You would be the ones who would have to take the chance of making it on your own as opposed to relying on——

Senator BERRIOS. That is what growing up means.

Senator MCCLURE. That is what my kids had to face at one point.

Senator BERRIOS. Of course. That is what becoming a man and a woman means. That is what becoming a nation means also.

The CHAIRMAN. Do you have any final comments, Senator McClure?

Senator MCCLURE. I have just a few more questions, not an extensive list.

We discussed rather fully the questions of the guaranteed civil rights under the United States Constitution as we go through a transition period and up to the proclamation of independence. We have discussed vested individual rights in retirement systems.

One thing we have not discussed is the guarantee for property rights. There were some careful consideration of that in the Tydings-McDuffie Act of 1934 dealing with property rights. Is there any particular reason that that was left out of your draft?

Senator **Berrios**. No, no reason whatsoever. And I must be very candid about that. Of course, there will be full guarantees in Puerto Rico, the same as for Puerto Rican property, due process under the law, and all the classical benefits that property owners have.

Senator **McClure**. That is one of the problems the United States has with the Universal Declaration of Human Rights is it covers a lot of things, but it doesn't cover property rights. And in our system of government we do believe that property rights are essential to individual freedom. Therefore, my question. I would just call attention to it and let's talk about it a little further to see what kind of guarantees we ought to have.

Senator **Berrios**. We might differ exactly as to the way you differ in the United States between political philosophies how much you can curtail reasonably specific property rights, but I think essentially in the fact that due process of law has to be given to the property owners, there is no objection whatsoever. The same way it is part of the constitution of the Commonwealth of Puerto Rico, the defense of property rights with due process under the law and the rights of the states guaranteed are going to be guaranteed in the constitution.

Senator **McClure**. My expectation is you will be no less diligent in protecting those rights than we are, but the draft is silent and I thought we ought to at least explore that.

In this title of the bill—and again, I refer to page 19 of the bill—subtitle 1 which is statement of purposes, is it your understanding that all of Title III, including the statement of purposes included in subtitle 1, will have no effect whatsoever unless independence is certified as the option receiving a majority vote?

The **Chairman**. If the Senator would yield. I thought we sort of had a meeting of the minds that the Title III statement of purposes we could delete as being——

Senator **Berrios**. That was the suggestion of Senator Johnston. I said it is a preamble statement, but if you have any question regarding it, I would be——

Senator **McClure**. I would have a question about it if it is included. Of course, if it is stricken, that becomes irrelevant.

Senator **Berrios**. If it is included, what is your question, Senator? Excuse me.

Senator **McClure**. The question is if it is included, no part of Title III has any effect unless it is the choice ratified by the majority of the Puerto Rican people. And in the event that it didn't receive a majority vote, then the preamble would have no effect.

Senator **Berrios**. The answer is that is correct, Senator.

Senator **McClure**. You made a statement yesterday I would like to get into context if I can. And I think I understand what you were saying, and yet I don't want it to have any residual effects that are unintended.

You mentioned yesterday that in order for this process to have international legitimacy, it would be necessary for the United States to first transfer sovereignty to Puerto Rico before it votes.

Senator **Berrios**. I said transfer all powers to Puerto Rico.

Senator **McClure**. Before the vote.

Senator **Berrios**. Before the vote, yes. But right away I said that there could, in our considered opinion, be substantive compliance with that requisite.

Senator **McClure**. Well, what I am trying to avoid is the possibility that you participate in the process of the election in Puerto Rico and having failed to succeed, then you say, well, it doesn't matter. The whole process was illegitimate anyhow.

Senator **Berrios**. That is what the Statehood Party has announced already, that they will participate, but that their right to combat whatever comes out—they say that it doesn't win. They will keep fighting for statehood.

Senator **McClure**. Well, you said earlier that the other parties couldn't have it both ways.

Senator **Berrios**. Yes.

Senator **McClure**. And I am trying to suggest you are not entitled to have it both ways either.

Senator **Berrios**. No, no. I'm going to tell you more. If the Independentistas win and if independence comes, I have no objection whatsoever to anybody preaching freely in Puerto Rico for statehood or for colonialism. I venture to say they won't get very many votes, but the same right they would have under independence, I would have under——

Senator **McClure**. I just don't want you participating in the election and then if you fail, saying, well, it was an illegitimate process anyhow.

Senator **Berrios**. That depends on the type of bill of law we have before us.

Senator **McClure**. I understand that, and you reserve your right to determine whether it is a legitimate or illegitimate process.

Senator **Berrios**. Correct. That is what I'm saying.

Senator **McClure**. And you will say that before we pass this legislation.

Senator **Berrios**. Of course.

Senator **McClure**. Before there is a vote.

Senator **Berrios**. Before there is a vote, I will say if it is legitimate or not, yes. But it would not be the first time one can participate in an illegitimate vote in process.

Senator **McClure**. I just don't want you exercising the prerogative to participate in a system which if you win, you like it, and if you lose, you condemn it.

Senator **Berrios**. Oh, no, no, no. The legitimacy or illegitimacy of the process will be—we will say what we believe regarding that before the process. Whether we participate or not depends on other circumstances. I will be very frank with you.

For example, the people who believe in democracy in Chile don't recognize the legitimacy of the Chilean government, but they participated in an election in Chile and, one, because they think it is convenient to their cause. Whether we consider it legitimate or not will depend on the end process, and whether we participate or not will depend frankly on whether we think it is convenient to the process to independence or not. I must be very frank with you.

Senator **McClure**. I want to be very frank with you too, and I appreciate that. We have had a very good exchange and I think a very good meeting of the minds.

My concern is that we want to make this a legitimate process.

Senator Berrios. I'm very glad.

Senator McClure. And I believe you want to make it a legitimate process.

Senator Berrios. That is correct.

Senator McClure. And I want you to make a statement about that before we submit to the vote in Puerto Rico, so that both we and the people of Puerto Rico understand at the beginning that you enter into the process with a free and open mind as to what it is so that you can't, in effect, have it both ways.

Senator Berrios. I assure you that statement will be made as soon as I have the final offer in my hands.

The Chairman. And we don't intend, of course, to take away your right of free speech if you lose the election. [Laughter.]

The next day you can say we want to go back to independence.

Senator McClure. I understand that. I have not yet lost an election, but I may sometime, and I may wish to fuss about the outcome if I lose.

The Chairman. Well, I think what you said, Senator McClure, is important. And up to this point at least this process is—you are satisfied that it can produce a free expression of——

Senator Berrios. Not only that, but up to this point I had not had the pleasure of meeting Senator McClure. I had the pleasure of meeting Senator Johnston starting with the prolonged conversations we had in Puerto Rico. And now with this prolonged exchange, I have no doubt whatsoever that both of you are directing this process in a very fair manner, in a very open manner, in a very democratic manner. If this is any anticipation of what will come, I will have no doubt sooner or later we will get to independence. [Laughter.]

The Chairman. Very well.

Senator McClure, if you have nothing further——

Senator McClure. I have nothing further. Thank you.

The Chairman. I want to thank you, Senator Berrios, and your colleagues. It has been a very productive morning I think. We still have a lot to do, but it is a process that will lead to self-determination.

[Whereupon, at 11:45 a.m., the committee recessed, to reconvene at 1:30 p.m.]

AFTERNOON SESSION

The Chairman. The committee will come to order.

Governor, we want to welcome you back to the committee, you and your distinguished panel. I see you have lots of good help here, many of my good friends, old friends and very respected people. So, please proceed.

STATEMENT OF GOV. CARLOS ROMERO BARCELO, PRESIDENT, NEW PROGRESSIVE PARTY (STATEHOOD), ACCOMPANIED BY NELSON SOTO, ECONOMIST; NELSON FAMADAS, ECONOMIST; DR. PEDRO ROSSELLO, VICE PRESIDENT, STATEHOOD PARTY; PAUL GEWIRTZ, PROFESSOR OF LAW, YALE LAW SCHOOL; BENNY FRANKIE CEREZO; GOV. LUIS A. FERRE; HARRY McPHERSON, ESQ.; AND GERARDO CARLO, ESQ.

Governor ROMERO. Thank you, Mr. Chairman, Senator McClure. Second to my left is Governor Luis Ferre who is here with me today also. Immediately to my left is Benny Frankie Cerezo who has been working with us as our main staff person regarding all the matters of the plebiscite bill. And next to Don Luis Ferre is our attorney here in Washington, Harry McPherson. And next to Mr. McPherson is our tax attorney in Puerto Rico who has been working with us together in tax matters, Mr. Gerry Carlo. To my right is Mr. Paul Gewirtz who is our constitutional counselor in matters pertaining to the constitution regarding the plebiscite. And next to Mr. Gewirtz is our Vice President of our party, Dr. Pedro Rossello, who was with us here yesterday. Next to Dr. Rossello is Nelson Famadas, an economist, who worked with me when I was in office as Governor as chairman of the Economic and Financial Council. And next to him is another economist from Puerto Rico, Mr. Nelson Soto. He used to be the chairman of the planning board in Puerto Rico.

The CHAIRMAN. I might say for the benefit of these experts and lawyers that they will be very pleased to know that yesterday we got a unanimous consent agreement which blocks out further consideration of the $1.5 million for Puerto Rico. So, that that means it will be in the bill. So, perhaps you will get paid. [Laughter.]

Governor ROMERO. That is very, very, very good news, Senator. We are getting a little bit embarrassed with our friends here. Some of them are doing it for nothing, and others are—of course, that's their profession, and they are worth more than their weight in gold.

Mr. Chairman, I would also like to comment. I think yesterday something was said here before this committee that was misleading. The governor mentioned that it had appropriated $1,350,000, and it appeared as though a third of that could be used by all the parties for the matters pertaining to the plebiscite. And I wanted to clarify. I didn't want to make any statement because I wasn't sure what bill he was referring to. So, I had to check on that before I made any statements.

I have since checked and I want the Chairman to know that that is incorrect and a misleading statement. There was a bill that was submitted in the legislature of Puerto Rico to appropriate $750,000 for the parties, each one, for the plebiscite expenditures. That was back on the 30th of January 1989. Nothing was done about that bill. That was tabled.

The CHAIRMAN. The point is you still need the money.

Governor ROMERO. Right. And I just wanted to point out that we don't have that money from Puerto Rico. What the governor said is not correct.

The CHAIRMAN. We brought that out this morning with the independence group. And I think what you should do is continue to help push with your friends in the White House and in the Congress to be sure that that is approved. We will have it through the Senate, and when we go to conference with the House, we hope and expect that they will take it and hope and expect that the White House will agree to it, although there was a time when they opposed it. And we think all is well that ends well, and we think the matter is final, but if you will continue to agitate for it with your friends, we would appreciate your help.

Governor ROMERO. We certainly will, Senator.

Senator MCCLURE. Might I also express one word of caution. Even assuming that money is made available, that has to spread over a considerable amount of time and a whole lot of issues. And while it may look like a lot of money now, a year from now it is going to look like a woefully inadequate sum. So, I think you need to husband your resources as much as possible which is by way of saying to all of your friends who are attorneys that pro bono is still welcome. [Laughter.]

Governor ROMERO. Thank you, Senator. We are very aware of what you said about it might not be sufficient. We started looking at the bills and what it is going to be costing, and are very much aware of that.

But once again, Mr. Chairman, we thank you and thank Senator McClure and the staff for all of the help that they have given us in every instance of the way. They have certainly been very positive in looking for ways to make sure that this legislation goes through and that we do have that plebiscite in Puerto Rico, that people be allowed to express themselves freely. We want to commend you on that and thank all of you and commend your staff for the extraordinary job that they have done. We will help as much as we can to make sure that this is kept on the timetable that you have set out.

Senator, Mr. Chairman, we have prepared our proposal, and I think perhaps the most controversial part of the proposal would probably be the economic aspect of the proposal. The other parts of the proposal deal with participation, voting rights, and representation, the dignity that is involved with statehood. I think that most of those issues don't need to be discussed. They are self-evident. However, any part of that should be discussed, we are more than willing and eager to talk about them.

In dealing with the economic aspects, we are also taking into consideration what we feel is a great concern of the Chairman, Senators and members of this committee, the whole Senate, the House of Representatives, the Congress and the President, the Nation as a whole, which is the national deficit. And we have tried to look at the issue so that we come out with something that has a negative budgetary impact. As you called it yesterday, it is something like neutral fiscal—neutral something or other you mentioned. It has a neutral budget impact.

The CHAIRMAN. Right.

Governor ROMERO. And we want to have a neutral budget impact.

I am not sure, Mr. Chairman, that we can achieve a neutral budget impact in the immediate future. I am positive that we can achieve a positive budget impact in a period of time. In other words, statehood is the only status solution that will in the long run be beneficial economically to the Nation. The balance of payments that now exist which are fully negative to the Congress will be reduced in the years to come and that if you go from zero base now, we will end up in a number of years where the Federal Government will be receiving positive inflow from Puerto Rico.

The CHAIRMAN. I understand that. Let me just say that Senator McClure and I are going to try very hard to get a package through the Congress that will include a realistic statehood provision. But in order to get it all the way through the Congress to give it to you, we can't overload it with a big budget impact. If we do, it is likely not to make it all the way through. Just as I told Governor Hernandez-Colon yesterday, I said you can't overburden this with extraneous matters such as tuna fishing. It is likely to slow it down too much through this process just as too much impact on the deficit would. So, that is the spirit in which I said that in helping all three parties to achieve the right to have this self-determination.

Governor ROMERO. I understand that, Senator, and we are working within that spirit. We have worked out different formulas. We put forth a specific formula which is for consideration. We feel that the best way to do this eventually is we have to sit down with the Treasury Department. We have to sit down with the Joint Tax Committee. We have to sit down with your staff people and also the Senate Finance Committee and the House Ways and Means Committee. And I am sure that a solution can be worked out.

Economics, as far as we are concerned, are negotiable. What we feel is not negotiable is our right to vote, our equality, our dignity as a people. Those aspects we cannot negotiate on, but economics are definitely negotiable. And the people of Puerto Rico want to have the right to vote and right to participate and to participate in decisions that affect our nation and to contribute to the economic impact that is borne by all the citizens in the nation. We don't want any privileges.

But you must realize that there has to be an adjustment period because of what Senator McClure very aptly mentioned yesterday. We will be the first territory to become a state since the Federal income tax laws were passed that is not paying income tax to the Federal treasury at the time of becoming a state. So, there has to be some kind of accommodation so that the full impact on the people of Puerto Rico is not felt from one day to the next. And I am sure we are all aware of that situation.

And within those constraints, we want to develop this program, and we have people who are working with us and looking for different ways. We have put forth what we feel would be very positive for Puerto Rico and which in the term of 25 years would give the Federal Government a favorable balance and at the same time put Puerto Rico well on its feet.

Yesterday we talked about several constitutional issues what I said would be addressed by Mr. Gewirtz, who is here with us today, and I would like to have Mr. Gewirtz make a short statement of maybe about 15 minutes on several of the issues that are involved, including the tax treatment for the period of adjustment and other matters. So, I would now like to leave with you Mr. Gewirtz.

[Additional statements for the record follow:]

LUIS A. FERRE TESTIMONY BEFORE THE UNITED STATES SENATE

The testimony that Governor Carlòs Romero Barceló will give is the continuation of the quest for Statehood that those of us who have confidence in the rich values and vigorous potential of American democracy have kept alive. I will only give you a personal perspective of our odissey.

I am now 85 years old and most of my life has been dedicated to the cause of Statehood for Puerto Rico because I sincerely believe that the United States is the true champion of freedom and equality in the world with a Constitution that has permitted the orderly and successful development of its resources.

It was 53 years ago, in 1936, that I first appeared before a committee similar to this one to oppose a bill by Senator Millard Tydings that would grant independence to Puerto Rico. I had to travel from San Juan to Haiti, Cuba, and Miami by plane and then by train to Washington. A long trip in those days, but moved by my desire to defend the right of Statehood for the loyal American citizens of Puerto Rico.

This was the beginning of a pilgrimage that has continued ever since and that will continue by myself and those that have my same convictions until we have achieved our goal: Seeing Puerto Rico admitted as a state of the Union.

It has been a difficult task because economic, political, and cultural objections have been raised by a large number of

Puerto Ricans, who though aspiring to retain their United States citizenship, were misled to believe that it was both impossible to attain and catastrophic for Puerto Rico to forsake its supposedly advantageous position of tax-exemptions under its territorial condition to assume the legitimate obligations of Statehood with all its rights and privileges.

Those of us who had confidence in the dynamic forces of Statehood, were convinced that this was a mistaken position. In 1949, we testified before the Sub-committee of the Committee on Labor and Education, at hearings held in Ponce, Puerto Rico and maintained that what Puerto Rico needed to solve the serious economic problems they had observed was something that "required more than a kind interest on their part and that of Congress to extend to us this or that measure of help in a generous spirit of "Fair Deal". "That the root of our problem went deeper and required an "Equal Deal" for the American citizens of Puerto Rico which would give them the equality of opportunity to which every American citizen is entitled, so as to be able to solve his own problem by his own efforts and through his own enterprise..."

And added: "What must be done instead? I contend that the problem of the United States citizens of Puerto Rico must be met with a massive attack, with courage, determination, and honesty. If we are American citizens, then we must be given the tools that our fellow American citizens in Continental United States have to solve their problems; and those are equal rights under Statehood, so that we can protect our economic interests in that very place - Congress - where economic policies are established."

This was in 1949. But our effort was to no avail. Puerto Rico continued as a ward of Congress with the illusion that it was better to enjoy tax-exemption than equality of rights and duties. And, as a result, the problems continued to grow and the economic help to Puerto Rico vastly increased.

In 1966 the United States-Puerto Rico Status Commission was created and I had the privilege of been appointed on behalf of the Statehood position. One of its conclusions reads, "Economic studies indicate that sustained economic growth, under the present status and continuation of the special economic arrangements will make Statehood with adequate, but not extraordinary or unprecedented provision for transition fully possible without severe risks.

Following the recommendations of the Status Commission, a Plebiscite was held in Puerto Rico in 1967 between independence, Statehood, and enhanced Commonwealth. The Statehood forces rallied under my leadership and that of Mr. Romero Barceló and others, and we increased our voting strength in such a manner, that four months after the Plebiscite, we organized the New Progressive Party, on the platform of Statehood and won the 1968 election, As a result, I was elected Governor, after 28 years of Commonwealth control,

Well, another generation has gone by since the Status Commission Report of 1966, and we find ourselves in the same predicament of trying to solve the problems of Puerto Rico, with patches of the same special measures that have proven ineffective for two generations. Are we going to try again the same measures that have failed and have made Puerto Rico dependent, every time in larger measure, from the largesse of Congress, to find ourselves a generation from now with a larger economic dependency or is it not time to try the well-tested method of equality of rights, obligations, and opportunities that has been so successful with the 50 states?

This paternalistic approach is not the method of American democracy and is not fair to the 3,300,000 United States citizens living on the Island, nor the 2,300,000 Puerto Ricans living in the 50 states, who have patriotically contributed to the defense of our Country during all the conflicts in which we have been involved during this Century and who by their industriousness and resourcefulness, have also contributed to the prosperity and progress of the United States.

Nor does it correspond either to the spirit of fair deal of American democracy to hold 3,300,000 United States citizens disenfranchised any longer from their political rights under the territorial clause of the Constitution. The United States Congress has been called by a great patriot the moral summit of the world. Giving Puerto Rico the right to assume its full responsibilities as a state of the Union after almost 100 years of apprenticeship is the best demonstration of your commitment to this lofty leadership. It will, also, be a proof to the world that democracy, American style does work.

Thank you.

Luis A. Ferré

June 1, 1989

JUNE 2, 1989

ADDITIONAL STATEMENT BY THE HON. CARLOS ROMERO-BARCELO
FORMER GOVERNOR OF PUERTO RICO
PRESIDENT OF THE NEW PROGRESSIVE PARTY
BEFORE THE ENERGY AND NATURAL RESOURCES COMMITTEE OF
THE UNITED STATES SENATE

YESTERDAY IN RESPONSE TO A QUESTION BY SENATOR CONRAD BURNS ON THE ENGLISH LITERACY OF PUERTO RICANS I MADE A REFERENCE TO THE COMMONWEALTH PARTY'S EFFORT TO SIGNIFICANTLY REDUCE ENGLISH LANGUAGE EDUCATION IN THE PUBLIC SCHOOL SYSTEM. AS AN EXAMPLE OF THE COMMONWEALTH PARTY'S USE OF THE PUBLIC EDUCATION SYSTEM TO CARRY OUT A PROGRAM OF SEPARATING PUERTO RICO FROM THE MAINLAND I SUBMIT TO THIS COMMITTEE A COPY OF AN ELEMENTARY SCHOOL TEXTBOOK THAT IS BEING USED TODAY IN THE STATE-WIDE PUBLIC EDUCATION DEPARTMENT BY OVER 65,000 FIRST GRADE STUDENTS. THE TEXTBOOK IS TITLED "MY FIRST BOOK OF PUERTO RICO" AND I SUBMIT A COPY FOR THE RECORD. I QUOTE THE FOLLOWING EXCERPTS:

MY FIRST BOOK OF PUERTO RICO

TRANSLATED EXCERPTS

"WHO AM I?

I AM A PUERTO RICAN.

MY FAMILY IS PUERTO RICAN.

PUERTO RICO IS MY FATHERLAND, MY COUNTRY.

PUERTO RICO IS A COUNTRY OF THE CARIBBEAN.

OTHER COUNTRIES LIKE PUERTO RICO IN THE CARIBBEAN ARE THE DOMINICAN REPUBLIC, HAITI, CUBA, JAMAICA, TRINIDAD, VENEZUELA, AND COLOMBIA.

PUERTO RICO, MY COUNTRY, ALSO HAS SYMBOLS. THE SYMBOLS OF PUERTO RICO ARE THE FLAG, THE SEAL AND THE HYMN.

PUERTO RICO, AS EVERY OTHER COUNTRY, HAS ITS FLAG.

IN PUERTO RICO, MY FATHERLAND, ALSO FLIES THE FLAG OF THE UNITED STATES OF AMERICA BECAUSE PUERTO RICO IS ASSOCIATED WITH THE UNITED STATES.

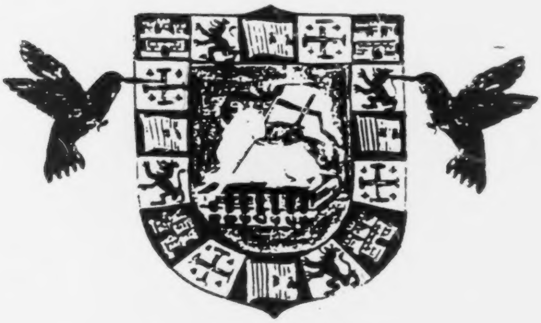
WE MUST RESPECT BOTH FLAGS BECAUSE THEY ARE THE NATIONAL SYMBOLS OF TWO COUNTRIES, OURS, PUERTO RICO, AND THE FRIENDLY COUNTRY, THE UNITED STATES, WITH WHOM WE ARE ASSOCIATED."

NOWHERE IN THIS TEXTBOOK IS THERE ONE SINGLE REFERENCE TO THE FACT THAT WE PUERTO RICANS ARE U.S. CITIZENS.

THIS IS NOTHING LESS THAN FLAGRANT INDOCTRINATION IN THE PUBLIC SCHOOLS THAT BRAINWASH THE MINDS OF THE SCHOOL CHILDREN WITH N~~ATIONALISTI~~C PROPAGANDA.

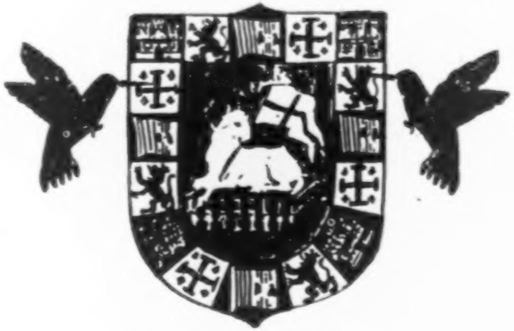
Separatist

Texto: Ricardo E. Alegría
Ilustraciones: Mela Pons Alegría



SAN JUAN DE PUERTO RICO
1985

Texto: Ricardo E. Alegría
Ilustraciones: Mela Pons Alegría



SAN JUAN DE PUERTO RICO

MI PRIMER LIBRO
DE PUERTO RICO

Texto
Ricardo E. Alegría
Ilustraciones
Mela Pons Alegría

SAN JUAN DE PUERTO RICO
1985

¿QUIEN SOY?

Me llamo José Francisco Martínez Pérez.

Tengo siete años de edad.

Nací en el Barrio Caguana de Utuado, un pueblo de Puerto Rico.

Ahora vivo en una casa en la calle Luis Muñoz Rivera número 86, en el pueblo de Jayuya, Puerto Rico.

Yo soy puertorriqueño.

MI FAMILIA

Mi madre se llama Carmen y mi padre José.

Mi hermana se llama Rosa y mi hermanito Juan.

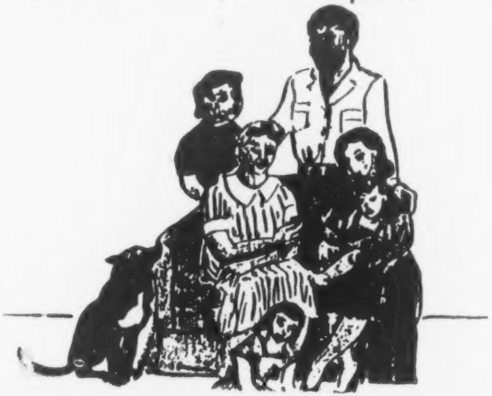
Mi abuelita, [illegible] madre de mi papá se llama El[illegible].

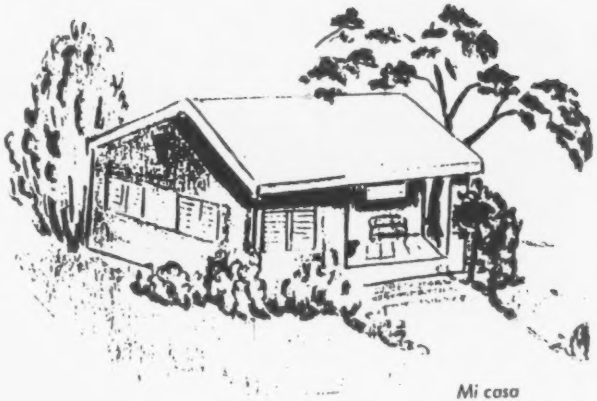
Mi abuelo, el padre de mi mamá se llama Luis.

El perro de mi familia se llama Capitán.

Mi familia y yo vivimos en una casa en el pueblo de Jayuya, en Puerto Rico.

Mi familia es puertorriqueña.





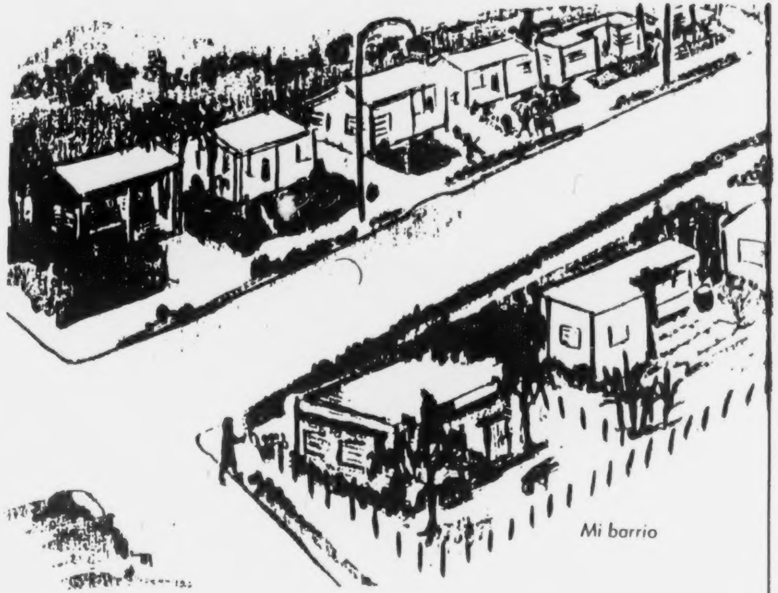
Mi casa

MI CASA, MI BARRIO

Yo, junto a mis padres, abuelos y hermanos formamos una familia puertorriqueña.

Mi familia y yo vivimos en una casa.

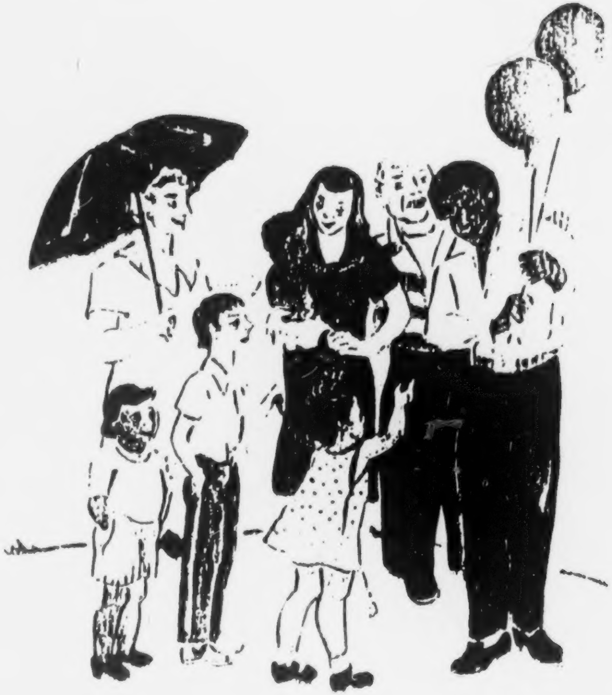
Junto a la casa de mi familia hay otras casas donde viven otras familias.



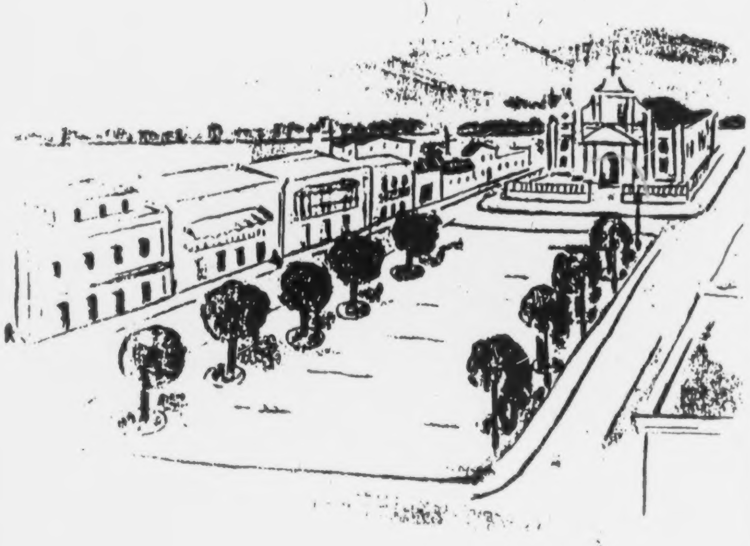
Mi barrio

Mi casa y las casas de las familias vecinas forman una comunidad, un barrio o una urbanización.

Los vecinos de mi comunidad o barrio son amigos y se ayudan.



Mis vecinos



El pueblo

MI PUEBLO

Muchos barrios, comunidades o urbanizaciones forman un pueblo.

El pueblo donde yo vivo se llama Jayuya.

En mi pueblo hay muchos barrios y muchas casas.

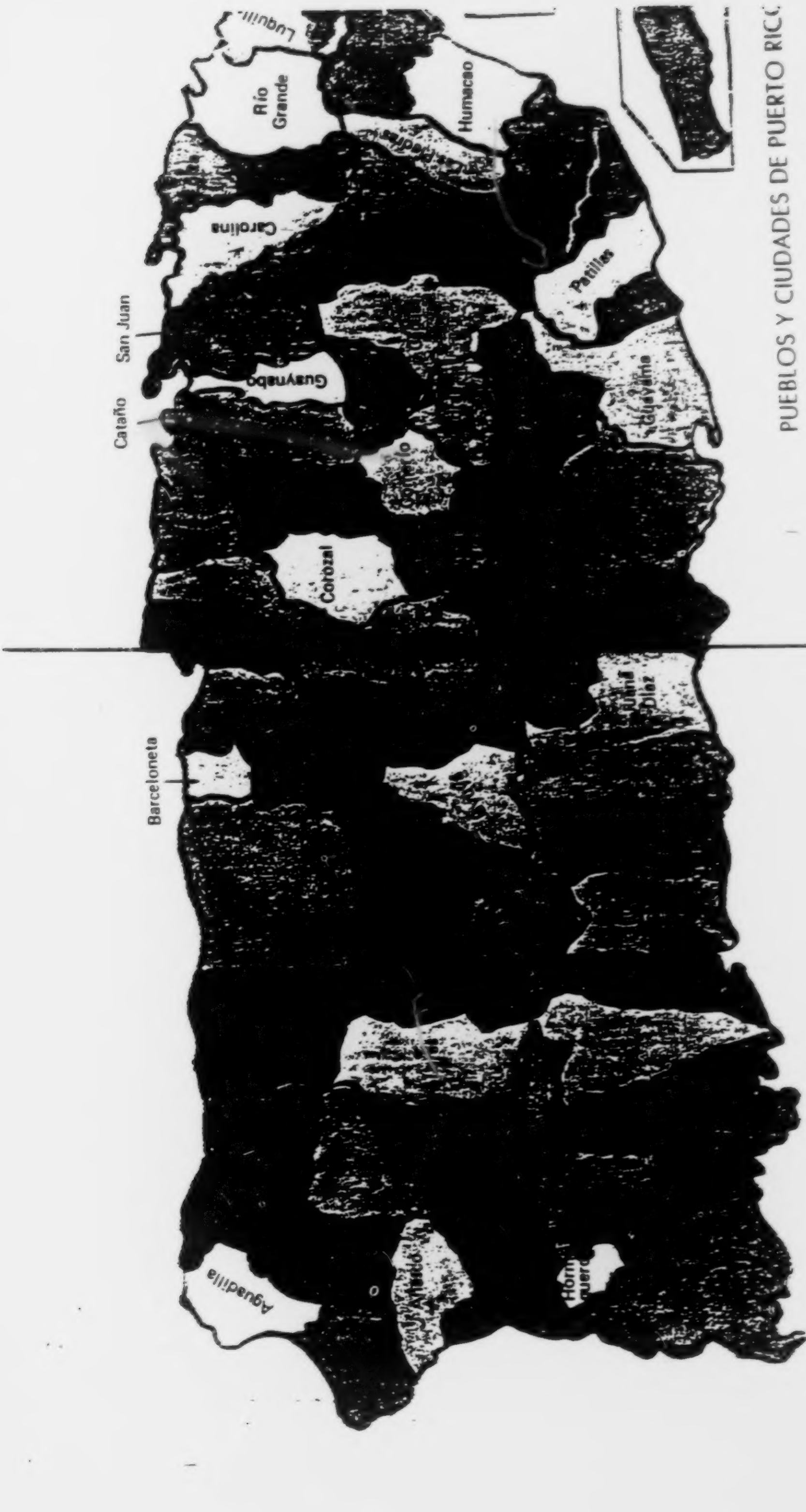
En las casas viven familias como la mía.

En el pueblo hay escuelas, tiendas, iglesias, teatros y parques de pelota.

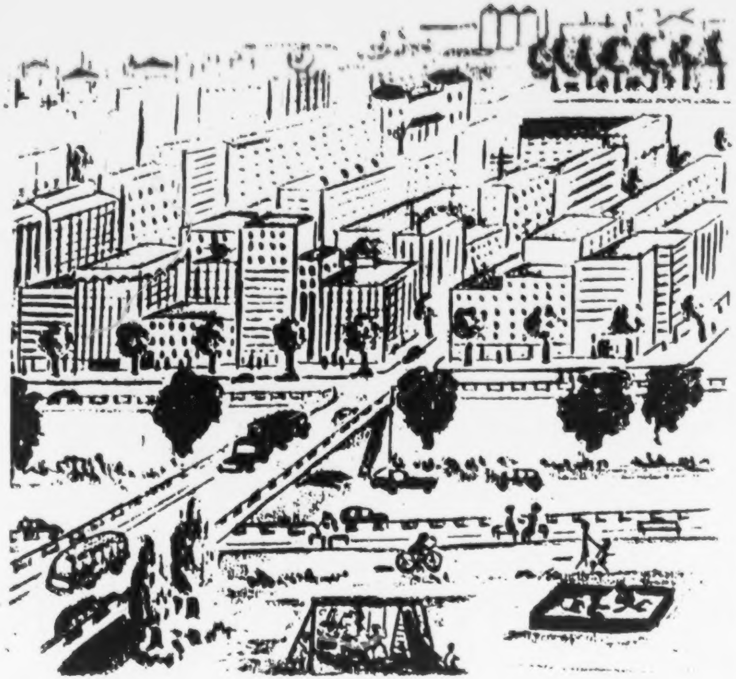
En los pueblos hay un alcalde o alcaldesa que ayuda a todos los barrios y a las familias.

Otros pueblos de Puerto Rico son Loíza, Cayey, Peñuelas, Santa Isabel, Moca, Naranjito y Corozal.

En Puerto Rico hay muchos pueblos.


Luquil
Río Grande
Humacao
Las Piedras
Carolina
San Juan
Cataño
Guaynabo
Patillas
Guayama
Comerío
Corozal
Barceloneta
Juana Díaz
Aguadilla
Añasco
Horm
uero

PUEBLOS Y CIUDADES DE PUERTO RIC



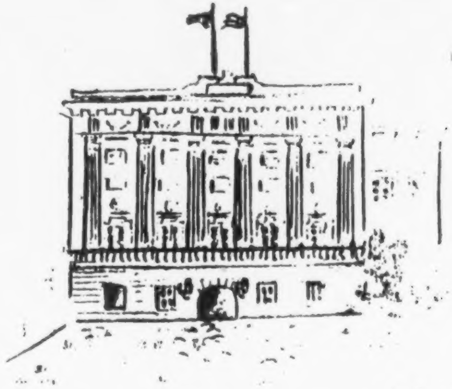
La ciudad

LA CIUDAD

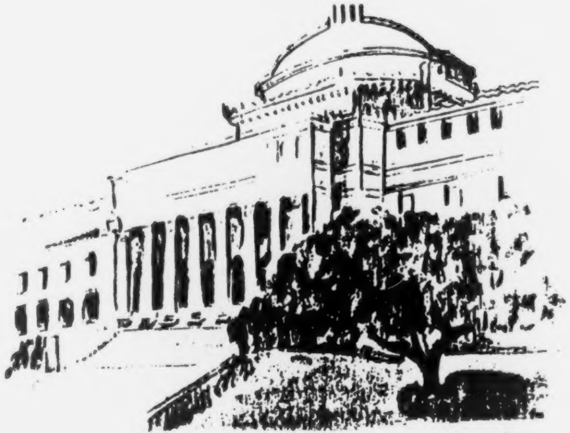
Cuando el pueblo es grande y tiene muchos barrios y muchas familias, se le llama ciudad.

San Juan es la ciudad capital de Puerto Rico.

En San Juan vive el gobernador de Puerto Rico.



La Fortaleza



El Capitolio

En San Juan está el Capitolio donde se reúne la Asamblea Legislativa para hacer las leyes de Puerto Rico.

Otras ciudades de Puerto Rico son Ponce, Mayagüez, Bayamón, Caguas, Carolina, Arecibo, Aguadilla, Guayama y Humacao.

PUERTO RICO, MI PAIS

Muchos pueblos y ciudades forman un país.

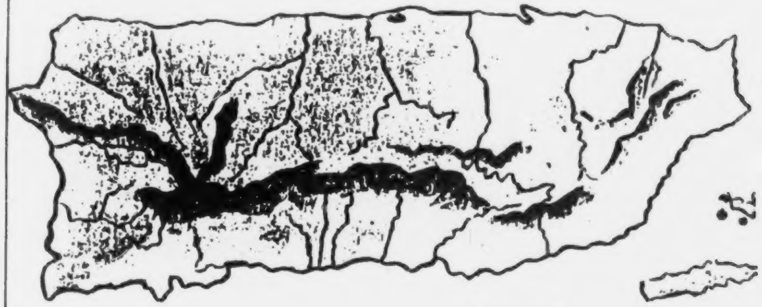
Nuestros pueblos y ciudades forman a Puerto Rico.

Puerto Rico es mi país, donde yo nací y vivo.

En el mar que rodea a Puerto Rico hay varias islas pequeñas.

Las islas más importantes junto a Puerto Rico son Vieques y Culebra.

Vieques y Culebra también tienen pueblos y son parte de Puerto Rico.



Puerto Rico

Todos los puertorriqueños queremos mucho a nuestro país, Puerto Rico.

Todas las niñas y los niños estudian para cuando sean grandes servir a Puerto Rico y a todos los puertorriqueños.

Puerto Rico es mi Patria, mi país.

Puerto Rico es una isla pues está rodeada por el Mar.

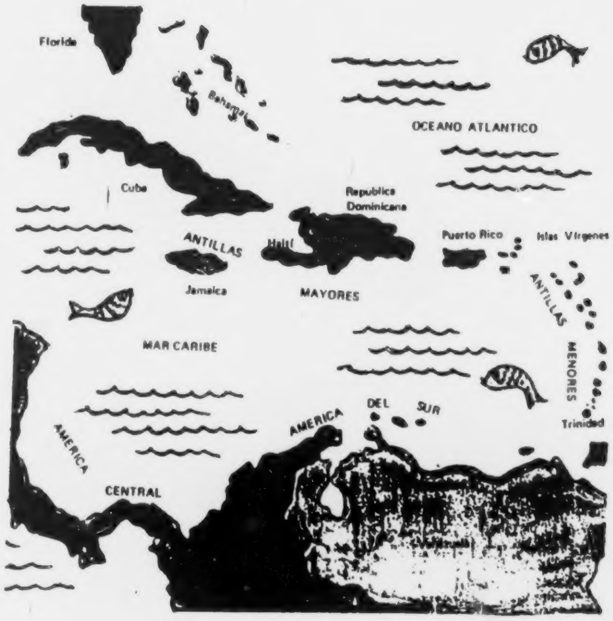
El mar de Puerto Rico es el Mar Caribe.

Puerto Rico es un país del Caribe.

Otros países que como Puerto Rico están en el Caribe son República Dominicana, Haití, Cuba, Jamaica, Trinidad, Venezuela y Colombia.

Los países del Caribe se parecen en muchas cosas. El clima es parecido.

ANTILLAS MAYORES
Cuba
República Dominicana
Haití
Puerto Rico
Jamaica


Florida
Bahamas
OCEANO ATLANTICO
Cuba
República Dominicana
Puerto Rico
Islas Vírgenes
ANTILLAS
Haití
Jamaica
MAYORES
ANTILLAS
MENORES
MAR CARIBE
AMERICA
DEL
SUR
Trinidad
AMERICA
CENTRAL

El Caribe

LOS SIMBOLOS DE PUERTO RICO

Todos los países tienen símbolos que los representan.

Puerto Rico, mi país, también tiene símbolos.

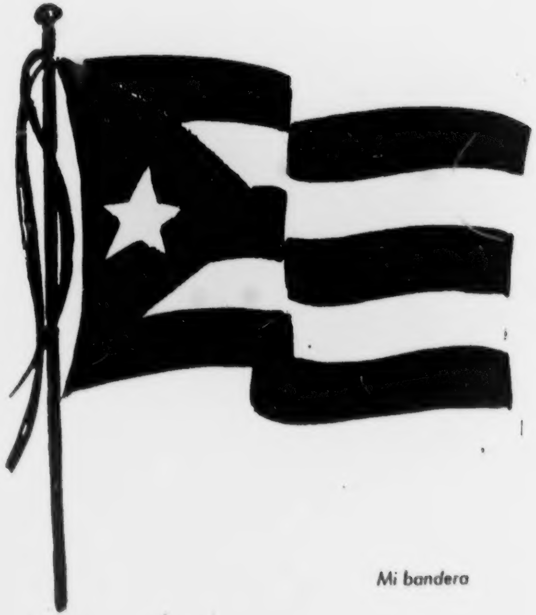
Los símbolos de Puerto Rico son la bandera, el escudo y el himno.

LA BANDERA

Puerto Rico como todos los países tiene su bandera.

La bandera de Puerto Rico tiene una sola estrella blanca sobre un triángulo azul y tres franjas rojas y dos blancas.

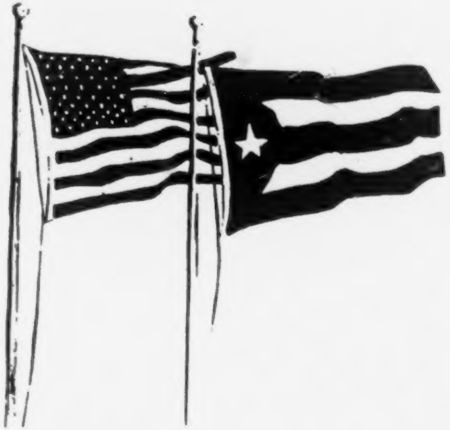
Todos los puertorriqueños queremos y respetamos nuestra bandera.

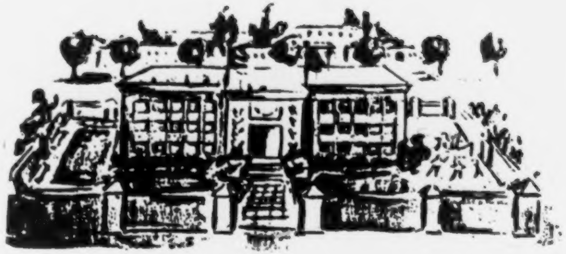


Mi bandera

En Puerto Rico, mi Patria, también flota la bandera de los Estados Unidos de América porque Puerto Rico está asociado a los Estados Unidos.

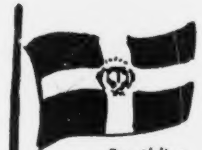
La bandera de los Estados Unidos tiene 50 estrellas blancas sobre un cuadro azul y franjas blancas y rojas.



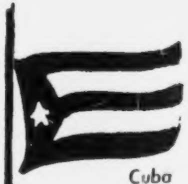


Las banderas en mi escuela y otros edificios son la de mi país, Puerto Rico y la de los Estados Unidos, el país al cual estamos asociados.

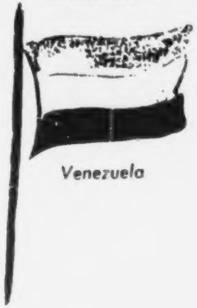
Debemos respetar ambas banderas pues son los símbolos nacionales de dos países, el nuestro, Puerto Rico y el país amigo, los Estados Unidos, al cual estamos asociados.



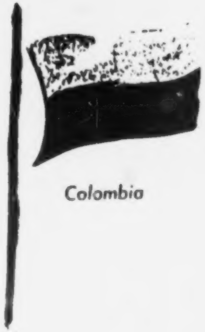
República Dominicana



Cuba



Venezuela



Colombia

Los otros países del Caribe y del Mundo también tienen banderas.

Aprende a conocer y respetar las banderas de otros países.

¿Cuáles tú conoces?

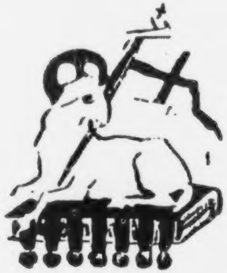
EL ESCUDO DE PUERTO RICO

Además de la bandera, los países tienen un escudo que los identifica.

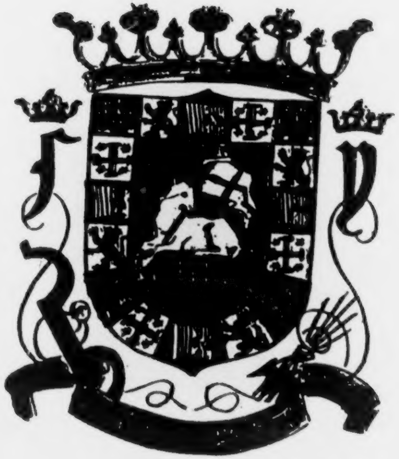
Puerto Rico tiene un escudo que es uno de los más bellos y antiguos de América.

Los Reyes de España nos dieron el escudo hace casi 500 años.

La parte central y más importante del escudo de Puerto Rico es la figura del Cordero de Dios.



El Cordero de San Juan



Escudo de Puerto Rico

El cordero también representa a San Juan Bautista.

El libro rojo donde está el cordero es un libro de la Biblia.

El borde del escudo tiene los símbolos de España y de los Reyes Católicos.

El lema del escudo es "Juan es su nombre".

EL HIMNO DE PUERTO RICO

Todos los países además de la bandera y el escudo tienen un himno.

El himno se toca y canta cuando hay actos públicos importantes.

Cuando se toca el himno todos, por respeto al país que representa, se ponen de pie y se quitan el sombrero.

El himno de Puerto Rico se llama La Borinqueña.

La Borinqueña se puede cantar. La letra de nuestro himno nos habla de Puerto Rico y de las bellezas de nuestro país.

La letra del himno de Puerto Rico es la siguiente:

Senator **McClure**. Mr. Chairman, I noticed that there is an extensive statement by Mr. Gewirtz, and I suggest we make the entire statement a part of the record and allow him to summarize those points which he would like to emphasize.

The **Chairman**. Yes, without objection, that will be done. In fact, all statements will be put in the record as if read in full. And I know Professor Gewirtz will give us the high points.

STATEMENT OF PAUL GEWIRTZ, PROFESSOR OF LAW, YALE LAW SCHOOL

Professor **Gewirtz**. Thank you, Mr. Chairman. I am very happy to be here today. As Governor Romero mentioned yesterday, I am a professor of law at Yale Law School. I have been on the faculty since 1976, and my main teaching and writing has been in the field of constitutional law.

I simply wanted today to say a few things relevant to the economic issues that are obviously at the core of our proposal. The proposal provides that the Congress take various steps to facilitate the economic adjustment from territory to state, just as Congress has done in admitting prior states. Some of these economic proposals clearly raise complicated policy questions, and I am surrounded by people who are policy experts.

What I want to emphasize is that the Constitution gives Congress extremely broad leeway in making those policy judgments. If there are difficult issues here, they are difficult policy issues not constitutional issues. And so, my message in brief is that the Constitution gives you an extremely broad leeway in making policy choices, and that includes extremely broad leeway with regard to tax treatment.

First, let me say a bit about direct economic grants and then something about taxation.

With respect to direct economic aid, there are nearly 200 years of historical precedent for the inclusion of some forms of special economic aid as part of the admissions process. First, there are land grants. Beginning with Ohio in 1802, Congress has typically given very extensive land grants to new states with a goal of assisting the new states in financing their new responsibilities. In fact, in the case of Alaska, an immensely valuable grant of 100 million acres was made as part of the admissions process.

And also common are cash grants. Alaska received many millions of dollars as a cash grant at the time of its admission. And where there are few Federal lands to be granted, as in the case of Puerto Rico, there is no reason why the ratio of cash grants to land grants couldn't be reversed.

Subsidies to new states have also taken some other forms. Alaska once again gives a good example. Under the Mineral Leasing Act, Alaska now receives 90 percent of the revenues earned through the leasing of Federal mineral lands while all other states only receive 50 percent of the comparable lease revenues.

And outside of the admissions process, obviously, Congress frequently targets direct economic aid to one geographic region or the other. Appalachia is perhaps the most obvious example.

So, the options are many, and direct economic aid to the new state of Puerto Rico in all of these historically familiar forms would clearly be constitutional. The goal of such aid is to facilitate the transition from territory to state and to try to make sure that the state gets off on a sound economic footing. Congress' powers here are under Article IV, the admissions power. Congress has broad spending powers. There are a variety of other powers which would justify a whole range of this kind of economic aid.

And with respect to taxation, the constitutional bottom line is the same. Congress has extremely broad power to deal with Puerto Rico's tax status as it thinks best in light of Puerto Rico's unique history and situation.

And my conclusions are basically twofold. First, if certain taxes are made applicable to Puerto Rico after it becomes a state, Congress has ample constitutional power to do what I think is the reasonable thing, which is to provide for a transition period to avoid the imposition of those taxes in a way that will have a suddenly disruptive impact on the economy of the new state, in other words, some sort of gradual phase-in.

But beyond that, if Congress makes the considered policy judgment that there is something in the distinctive circumstances of Puerto Rico that warrant continuing some of its distinctive tax treatment indefinitely, the Constitution would permit that as well. And I want to linger a bit with those conclusions because I know that there has been some suggestion that tax provisions that are specially applicable to Puerto Rico would be unconstitutional, and that is just flatly wrong. And I want to just say a bit about that constitutional issue which is a potential cloud over an awful lot of what I think is important to do as part of this statehood admissions process.

To explain this, I have to start with the text of the Constitution. The alleged constitutional problem is said to be the Uniformity Clause which states—and I'm quoting—"All Duties, Imposts and Excises shall be uniform throughout the United States." By the way, this is on page 16 of my testimony so you can follow this part there.

And the argument is that that Uniformity Clause prohibits geographically defined taxes and therefore would prohibit special tax treatment to Puerto Rico after it became a state. But, in fact, that is not the law. That is not what the Uniformity Clause means, and in spite of what some have been suggesting to you, the case law is really very clear the other way, which is that the requirement of uniformity does not bar geographically defined tax treatment.

And you should also know that there is no Supreme Court case that has ever invalidated a congressional tax provision on Uniformity Clause grounds. And I think the best way to convince you of the point I am making is to briefly mention a recent Supreme Court case that is squarely on point that involves a statute that you will probably remember. And the statute is the Crude Oil Windfall Tax of 1980. The case is called United States v. Ptasynski. And I just a few minutes ago gave copies of the opinion to the staff, so you may have it in front of you.

That act excluded from the windfall profits tax exempt Alaska oil. Alaska specifically singled out. And the Supreme Court unanimously—unanimously—upheld the constitutionality of doing that. The Court's opinion was written by Justice Powell, and I think lawyers would agree that a unanimous opinion written by Justice Powell is as good as gold.

And he squarely rejected the claim that the Uniformity Clause barred that state's specific exemption. And I'm quoting from his opinion. He says,

> The Uniformity Clause gives Congress wide latitude in deciding what to tax, and it does not deny Congress the power to take into Congress the power to take into account differences that exist between different parts of the country and to fashion legislation to resolve geographically isolated problems.

So, what the Court said that a geographically isolated tax is constitutional if it deals with a geographically isolated problem. That is the key phrase, "geographically isolated problem". And what the Supreme Court did in the Ptasynski case was that it completely deferred to Congress' judgment that there were things about Alaska, the fragile ecology, the harsh environment, the remote location, which made exempt Alaska oil a unique class of oil meriting special tax treatment.

And what the Court said—and I'm quoting again—

> Where, as here, Congress has exercised its considered judgment with respect to an enormously complex problem, we are reluctant to disturb its determination.

That is a very, very compelling precedent.

And just as Congress had an ample basis for concluding that Alaska's unique problems justified special tax treatment under the windfall profits tax, Congress would clearly have ample basis for concluding that the continuation of some special tax treatment for Puerto Rico would address a geographically isolated problem. Puerto Rico certainly presents factors that Congress could conclude were unique, particularly in combination. And I just mentioned a few of them: special economic needs as the state with the lowest per capita income in the United States, separation from the mainland, a unique role in the Caribbean Basin Initiative, and perhaps most obviously a long history of special tax treatment, and an economy that has grown up around those exemptions.

My point is not to say that Congress is compelled to give Puerto Rico some special tax treatment, but what I want to do is to lift this erroneous cloud that hangs over this issue and make it clear that the Constitution doesn't at all stand in Congress' way.

And I also want to mention one other relevant precedent for Puerto Rico, with which this committee may be familiar. And for this one, one need look no further than the enabling act concerning the admission of Hawaii and Alaska. The enabling act for those two states explicitly contained an exemption from the transportation tax, which those two states had enjoyed as territories, and that exemption remains in force today. And like the special tax treatment for Alaska and the windfall profits tax, the special exemption for Alaska and Hawaii from the transportation tax is constitutionally justified because Congress determined that there was a geographically isolated problem, in the case of Alaska and Hawaii,—I am quoting from the legislative history here—"the handicap which Alaska and Hawaii suffer because of their distance from the mainland of the United States."

Now, those two examples are situations where state-specific taxes, tax exemptions, were provided on an indefinite basis. Where we are talking about the possibility of a temporary transitional tax as part of the admission of a new state, Congress's powers are absolutely at their broadest because in addition to all the usual powers Congress has, it has the power under Article IV concerning the admission of new states which obviously present a distinct set of problems.

So, in brief and I guess in sum, the point that I am making—and it's elaborated in much greater detail in the testimony—is that when it comes to tax treatment, you have a broad range of options, all of which are constitutional. Those options include: one, straight-out special tax treatment for Puerto Rico in geographic terms; two, a phase-in the application of taxes to Puerto Rico over a transition period; three, framing tax treatment in subject terms which may be sculpted to Puerto Rico's unique circumstances but are framed in subject matter terms; fourth, returning direct tax revenues from the U.S. treasury to the Puerto Rico treasury; and fifth and finally, taking account of the unique problems that imposition of taxes would impose by increasing the size of direct economic grants.

The point is you have the leeway under the Constitution which may simply open up the debate for what the rest of the people here will be talking about, but it is important I think to emphasize that the issues are policy issues, not constitutional ones.

[The prepared statement of Professor Gewirtz follows:]

Testimony of Paul Gewirtz
before the
Committee on Energy and Natural Resources
of the
United States Senate
on S. 710, S. 711 and S. 712

June 2, 1989

Mr. Chairman and Members of the Committee:

My name is Paul Gewirtz. I am a Professor of Law at the Yale Law School. I have taught at Yale since 1976, where my main teaching and writing has been in the field of Constitutional Law. Prior to teaching at Yale, I was a law clerk to Justice Thurgood Marshall at the Supreme Court of the United States, and I practiced law for several years here in Washington.

I am very pleased to have the opportunity to testify today on behalf of the Statehood Party of Puerto Rico (the New Progressive Party), and to be able to address some of the legal issues raised by the status reassessment this Committee has initiated. This is an historic moment. The political destiny of the 3.3 million American citizens in Puerto Rico is being forged, and the United States itself, I hope, is on the verge of admitting a new State into our ever-evolving Union.

From the Statehood Party's perspective, there are three basic questions facing Congress:

--First, why a referendum now?

--Second, why statehood for Puerto Rico?

--Third, if statehood, what should be the terms of admission?

I want to address some legal issues relevant to each of these questions--focussing especially on the third. I also want to comment briefly on referendum procedure and on one aspect of the Commonwealth definition.

I. WHY A REFERENDUM NOW?

First, why a referendum now? The President of the United States has called for it. The Chairman and Ranking Minority Member of this Committee have called for it. The leaders of Puerto Rico's three main political parties, including its elected Governor, have called for it. But why should their calls be heeded, and why should Congress go ahead with--let's be honest--the very complex process of reassessing Puerto Rico's status?

Without wishing to use inflated rhetoric, I think the answer is that we have a moral and legal obligation to hold a referendum. Over the past forty years the government of the United States has repeatedly stated that the people of Puerto Rico were free to change their status if they wished.[1] These repeated statements reflect an appreciation that the people of Puerto Rico should not be locked-in to the unique and unusual arrangement they agreed to 40 years ago if they want a change.

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[1] "Every U. S. President since Dwight D. Eisenhower, and the U.S. Congress, in a joint resolution dated August 3, 1979, has pledged to respect the freely and democratically expressed will of the people of Puerto Rico with respect to their future." R. Perusse, The United States and Puerto Rico (1987), p. 58.

These repeated statements by American leaders not only state our country's policy, but also reflect Puerto Rico's right of self-determination under international law.[2] Despite that recognized right, a referendum has not been held since 1967. Since that date, the number of Puerto Ricans eligible to vote has doubled. The strength of the Statehood Party has grown. Dissatisfaction with the status quo, even among Commonwealth supporters, has greatly increased. All of the political parties in Puerto Rico now agree it is time for a change, of one form or another. The United States has the obligation to recognize this mandate for change and to hold a referendum to determine the contemporary will of the Puerto Rican people.

II. WHY STATEHOOD?

Second, why statehood?

Strictly speaking, this question is not before you for decision, since none of you must chose among the three status options. But it is important that we answer any questions you have that may prevent you from being receptive to statehood if the Puerto Rican people choose it. In addition, your announced receptivity to Statehood--as individuals as well as a Congress--is important in making sure that the referendum elicits the true will of the Puerto Rican people. Given the complex history of

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[2] Puerto Rico retains that right whether its current status is considered to be that of a non-self-governing territory or a freely associated State. G.A. Res. 1541 (XV), Annex.

U.S.-Puerto Rico relations, many Puerto Ricans who wish in their hearts to join the Union may be reluctant to vote that way if they believe that the United States will rebuff them. But if you have first affirmed your own receptivity to Statehood, they will vote their true choice.

So one purpose of these hearings is to address the question, "Why statehood?" Governor Romero and Governor Ferre answered that question with eloquence in their testimony yesterday and today. I simply wish to underscore two main themes that have a constitutional dimension: equality and permanence.

Equality: The aspiration for statehood is an aspiration of American citizens for equal citizenship, an equal place in the American family and in the American dream. Only statehood can provide that equality, and the dignity that comes with it. As I have discussed this issue with even my most educated friends, I am startled at how many of them do not realize that Puerto Ricans are American citizens. They do not realize that these American citizens have long fought as equals with other American citizens in our wars, but that in peace they have a second class citizenship. These 3.3 million American citizens do not have Representatives or Senators in Congress, even though the Congress governs their lives; they do not vote in Presidential elections. They do not have full rights under the Constitution, and they do not share equally in federal programs. They do not have the dignity of being full members of the American family. As Judge

Juan Toruella of the United States Court of Appeals for the First Circuit has put it, Puerto Ricans are "separate and unequal" citizens.[3] It is time to end that.

Commonwealth, however "enhanced", cannot eliminate this unequal status. Nor does the Commonwealth definition really aspire to do so: Puerto Rican citizens will still lack representation in this body, for example. That is because the deficiencies of Commonwealth are constitutional, deriving from its inescapable status under the Constitution. In some respects, Commonwealth may be "a relationship to the United States that has no parallel in our history" (Examining Board v. Flores de Otero, 426 U. S. 572, 596 (1976)), and for some purposes Congress may choose, if it wishes, to treat Puerto Rico like a "state" under one or another statute (see, e.g. Fornais v. Ridge Tool, 400 U.S. 41, 42 n.1 (1970); Torres v. Commonwealth, 442 U.S. 465, 470 (1979)). But for constitutional purposes, as the Supreme Court plainly put it in 1980, Puerto Rico is a "territory belonging to the United States and [Congress] may treat Puerto Rico differently from the states as long as there is a rational basis for its actions." Harris v. Rosario, 446 U.S. 651 (1980); see Califano v. Torres, 435 U.S. 1 (1978); Cabranes, Puerto Rico: Colonialism as Constitutional Doctrine, 100 Harv. L. Rev 450, 461-62 (1986). Niceties of phrasing, face-saving formulations, and occasional congressional largesse, cannot wish away this constitutional reality.[4]

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[3] J. Toruella, The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal (1988).

Permanent Union: This brings me to the matter of permanence. Another aspect of the aspiration for statehood is the aspiration for a status that is permanent, for some assured and definite place in the political firmament. For too long, Puerto Rican politics has been driven by the ever-unresolved question of status, deflecting needed attention from other matters. Commonwealth is always in a condition of becoming, always raising questions about how its status can be enhanced, always raising fears that Congress may chip away at its status. While the contours of Commonwealth are always up for grabs, Statehood has a defined constitutional meaning; it is a permanent status, in a condition of equality with the other states.

Statehood, in short, is the only status of permanent union with the United States, permanent union in a condition of equality. There has been considerable misconception created by the fact that the Commonwealth definition has labelled Commonwealth a condition of "permanent union" with the United States. Indeed, the PDP has recently run newspaper advertisements in Puerto Rico stating that "Commonwealth has the same permanence as Statehood" ("el Estado Libre Asociado en union permanente con Estadas Unidas tiene la misma permanencia que la estadidad").

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[4] The "separate and unequal" status of Puerto Rico not only goes against the basic constitutional ideal of equality but also challenges norms of international law. International law of self-determination mandates that the "integration" of a territory into a sovereign Nation take place "on the basis of complete equality", so that citizens of the integrated territory have "equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination." G.A. Res. 1541 (XV), Annex. This, of course, is exactly what Statehood would mean for Puerto Rico. A territory which is not integrated but rather is "freely associated" with another Nation must have the right to determine its internal affairs without outside interference. Id.

But the Commonwealth of Puerto is neither "integrated" nor "freely associated", neither equal nor autonomous. Its citizens are not guaranteed the same rights and representation as other Americans, nor are they enabled to govern themselves internally without restriction and pre-emption by federal law. The new Commonwealth definitions would not remedy this anomolous status. Puerto Ricans would remain a unique class of citizens, lacking federal voting rights; and the federal government would retain significant power over the internal affairs of Puerto Rico.

The notion that Commonwealth is a status of "permanent union" or a status with "the same permanence as Statehood" is a fantasy. Senator Johnston was simply making a straightforward, accurate statement of law when he said in a recent interview: "Is [Commonwealth] permanent under law? Of course not, it can't be permanent under the Constitution because by definition it cannot be." San Juan Star, May 21, 1989, pp. 1, 26. Mr. Chairman, I know that statement has created somewhat of a fuss--not because it is false, but because it is true.

Commonwealth is a status established by Congressional legislation, enacted pursuant to Congress' Art. IV power to provide rules and regulations for the territories. See Harris v.

Rosario, 446 U.S. 651 (1980).[5] No Congress has the power to bind a future Congress to adhere to its legislation, "to surrender an essential attribute of its sovereignty." United States Trust Co. of New York v. New Jersey, 431 U.S. 1, 23 (1977); see also Pension Benefit Guaranty Corp. v. R. A. Gray, 467 U.S. 717, 733 (1984). Just as one Congress may adopt rules giving the Commonwealth of Puerto Rico certain privileges, a subsequent Congress has the power to remove those privileges. As a matter of federal constitutional law, therefore, Congress may change the U.S.-Puerto Rico Commonwealth relationship on a unilateral basis whenever it wants. Congress may decide it does not wish to do so, but the point is that it has the legal power to change the relationship. In 1984, for example, over the objection of the Government of Puerto Rico, Congress "denied the island the revenues from an increase in the tax on Puerto Rican rum sold in the United States even though the Puerto Rico Federal Relations Act states clearly that 'all taxes collected under the internal revenue law of the United States on articles produced in Puerto Rico and sold in the United States...shall be covered into the Treasury of Puerto Rico.'"[6]

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[5] The House Report made explicit that Public Law 600 "would not change Puerto Rico's fundamental political, social and economic relationship to the United States." H. Rep. No. 1832, 82nd Cong., 2d Sess. 3 (1952). Setting the terms of the relationship between U.S. and Puerto Rico was obviously not handled as a treaty between sovereign nations by the Senate, but rather as a piece of domestic legislation.

[6] R. Perusse, supra note 1, p. 5.

To say that Commonwealth has "the same permanence as Statehood" is really quite ridiculous. It is true that an 1868 Supreme Court decision notes in passing that Statehood may be revoked through the consent of all the States in the Union--and, the Court adds, by a successful revolution as well. Texas v. White, 74 U.S. 700, 726 (1868). So in that sense, yes, there is a wisp of ultimate impermanence to Statehood too. But statehood is granite to Commonwealth's gossamer. What the opinion in Texas v. White focusses on (not in passing, but on page after page; not tentatively, but with an authoritativeness resting on the fact that a Civil War had just been fought to enshrine these truths) is "the perpetuity and indissolubility of the Union," "indissoluble unity", "the obligations of perpetual union." To say that Commonwealth has "the same permanence as Statehood" is to equate "indissoluble unity" with "unilateral dissolvability."

Statehood, in sum, is the only form of "union" with the United States embraced by the Constitution's vision of "a more perfect Union" -- a union of States. It is certainly the only "permanent" union with the United States. More importantly even, it is "the only permanent union with the United States that is consistent with the `more perfect union' of equal States established by the United States Constitution." S. 711, tit. II (emphasis supplied).

III. TERMS OF ADMISSION

If statehood is the preferred alternative, what should be the terms of admission? There are really two aspects to that question. First, are there constitutional restrictions on the terms that Congress may impose? Second, to the extent Congress has constitutional leeway to do what it determines is best, what terms should Congress impose as a matter of policy? That all-important second part I will leave largely to others, and focus here on the constitutional issues.

The Constitution does not structure the process of admitting new States to the Union. Rather, Art. IV, Sec. 3 gives Congress broad power over the admissions process:

> "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of Congress."

Congress' basic power to admit new states is supplemented by (for example) Congress' spending power (Art. I, Sec. 8) and the Necessary and Proper Clause, which empowers Congress "to make all Laws which shall be necessary and proper for carrying into Execution" other powers (Art. I, Sec. 8).

The most important limitation on Congress' admission powers was elaborated by the landmark Supreme Court case, Coyle v.

Smith, 221 U.S. 559 (1911). Congress had admitted Oklahoma to the Union on the condition that the State capital be located in Guthrie rather than Oklahoma City. The Coyle Court ruled that this condition was unconstitutional, reasoning that: "[W]hen a new State is admitted into the Union, it is so admitted with all of the powers of sovereignty and jurisdiction which pertain to the original States," and Congress may not impose any conditions on the newly admitted State "which would not be valid and effectual if the subject of congressional legislation after admission." Id. at 573. Congress, therefore, may not admit a new State on a less than equal footing with existing States, and may not impose any condition on statehood that would violate the constitutonal rights of an already admitted State or its citizens.

Our Statehood definition sets forth terms of admission--including certain economic assistance--that are all within Congress' constitutional powers, and it avoids terms of admission that would exceed those powers. Two substantive areas addressed by the definition warrant more particular discussion here: economic matters and language. I address each separately.

A. TAXATION AND OTHER ECONOMIC MATTERS

The Statehood definition anticipates that Congress will take various steps to facilitate Puerto Rico's "Economic Adjustment from Territory to State" (Sec. 16), as Congress has done when admitting prior States. Many different types of economic adjustments would make sense as a policy matter, and Congress will continue to explore the policy questions throughout these hearings. What I wish to emphasize is that the Constitution gives Congress extremely broad leeway in making those policy judgments. If there are difficult issues facing Congress regarding economic adjustments for the prospective state of Puerto Rico, these are policy issues, not constitutional ones. My message, in brief, is that the Constitution gives you an extremely free hand to do what you think makes the most policy sense. And this includes having an extremely free hand regarding the tax treatment of Puerto Rico.

1. Cash grants, land grants, and other direct economic aid

There are nearly 200 years of historical precedent for the inclusion of special economic aid as part of the admissions process. Beginning with Ohio in 1802, Congress has typically given extensive tracts of federal land to new states to assist them in financing their new responsibilities.[7] In the recent case of Alaska, an immensely valuable grant of 100,000,000 acres was made. Direct cash grants--such as the general purpose grant of $28,600,000 provided to Alaska over a five-year period--have been common as well.[8] Where there are relatively few federal lands to be granted, as with Puerto Rico, there is no reason that the ratio of cash to land grants could not be reversed.

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[7] Comptroller General, Experiences of Past Territories Can Assist Puerto Rico Status Deliberations (1980), p. 15.

[8] Id. at 14-18; L. Davila-Colon et al, Breakthrough From Colonialism: An Interdisciplinary Study of Statehood (1984), pp. 1153-54.

Congress has also subsidized newly-admitted States through means other than land and cash grants. Alaska once again provides an example: Under the Mineral Leasing Act, as amended by Alaska's Enabling Act, the State of Alaska receives 90% of the revenues earned through the leasing of Federal mineral lands located in the State, while all other States only receive 50% of comparable lease revenues. 30 U.S.C. § 191 (1982). And Congress, of course frequently grants direct economic assistance to one or another geographic area of the country to address economic development needs. For instance, the Appalachian Regional Development Act of 1965 provided for a comprehensive program of economic measures targeted only to the impoverished region of Appalachia. 40 U.S.C. § 1 et seq. (Appendix).

Direct economic aid to the new state of Puerto Rico in all of these historically familiar forms would clearly be constitutional. Such assistance falls comfortably within a variety of different Congressional powers, viewed singly and in combination. Congress' twin Article IV powers "to admit new states" and "to make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States"--as supplemented by the Necessary and Proper Clause--give Congress broad powers to facilitate the transition from territory to state and to launch a new state on a sound economic footing. Congress' power to dispose of its "other Property" independently gives

Congress broad power to make land grants to states. *Alabama v. Texas*, 347 U.S. 272 (1953). And Congress' spending power gives Congress virtually unlimited leeway to expend public funds in ways that, in its judgment, will "provide for the... general welfare." Art. I. Sec. 8.[9] The amount of economic assistance under any of these avenues is completely within Congress' discretion, and may reflect Congress' assessment of what is necessary and appropriate to facilitate Puerto Rico's economic adjustment as a State.

The doctrine that new states be admitted on an "equal footing" with other states has no bearing on Congresss' powers to grant such economic assistance to new states, as the historic precedents show. The "equal footing" doctrine "has long been held to refer to *political* rights and to sovereignty," and not to include "economic stature or standing." United States v. Texas, 339 U.S. 707, 717 (1949) (emphasis supplied). It prohibits Congress from admitting a new state with less "political standing and sovereignty" than the other states, id., and in no way bars Congress from giving the new state economic assistance appropriate to its situation or "ced[ing] property to one state without corresponding cessions to all states." Alabama v. Texas, supra, 347 U.S. at 275 (Reed, J., concurring).

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[9] Expenditures under the spending clause must be for the "general welfare", but "[i]t is for Congress to decide which expenditures will promote the general welfare." *Buckley v. Valeo*, 424 U.S. 1, 90 (1976). The Supreme Court "has declared that, in deciding whether the objective of a particular expenditure program is the national interest rather than merely the interest of the directly benefitted locality, 'discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power [rather than] an exercise of judgment.' [quoting Helvering v. Davis, 301 U.S. 619, 640 (1937)]... Judgments concerning the generality of benefits conferred by federal expenditures require determinations of fact that Congress is better equipped to make than the Supreme Court. Given such judicial deference, the generality limit on congressional spending is more apparent than real." L. Tribe, American Constitutional Law (2d ed. 1988), p. 322-23. Clearly Congress could plausibly make the judgment that spending targetted to the new state of Puerto Rico, to facilitate its transition into the Union and to enable it to function more effectively in the American economy, was in the general national interest.

2. Taxation

While the issue of taxation is somewhat more complex than direct economic grants, the bottom line is the same: Congress has extremely broad constitutional power to deal with Puerto Rico's tax status as it thinks best in light of Puerto Rico's unique history and situation.

To the extent that certain now inapplicable federal taxes are made applicable to Puerto Rico after it becomes a State, Congress has ample constitutional powers to do the reasonable thing: to allow the imposition of these taxes to have a gradual impact so as to avoid sudden disruptions to the economy of the new State. Moreover, should Congress make a considered policy judgment that Puerto Rico's unique conditions warrant continuing Puerto Rico's distinctive treatment under some tax laws indefinitely, the Constitution would permit that as well. Put another way, Congress may continue to use distinctive tax approaches to Puerto Rico either on a temporary transitional basis (to facilitate its transition from territory to state) or, where appropriate, on an indefinite basis (to take account of other distinctive aspects of Puerto Rico's situation).

Specifically, Congress has at least the following options with regard to taxes in Puerto Rico, all of which are constitutionally permissible: (a) Congress may frame special tax treatment for Puerto Rico in geographic terms; (b) Congress may phase-in the application of taxes to Puerto Rico over a transition period; (c) Congress may frame tax treatment in subject terms that are favorable to Puerto Rico; (d) Congress may directly return tax revenues from the U.S. Treasury to the Puerto Rican Treasury; (e) Congress may cushion the effect of the application of new taxes with direct economic assistance to Puerto Rico.

(a) Congress may frame special tax treatment in geographic terms

There has been some suggestion that the Uniformity Clause of the Constitution (Art. I., Sec 8, 1)--stating that "all Duties, Imposts and Excises shall be uniform throughout the United States"--prohibits geographically-defined taxes, and therefore that tax provisions specially applicable to the state of Puerto Rico would be unconstitutional. That is flatly wrong. Even assuming that the Uniformity Clause applies to all the taxes relevant here, including the income tax--still a debated proposition[10]--it is crystal clear that the requirement of uniformity does not bar geographically-defined tax treatment. Moreover, no Supreme Court case has ever relied on the Uniformity Clause to invalidate a Congressional tax provision.[11]

(i) Judicial Precedent: Supreme Court Cases

The most recent major case squarely on point is the Supreme Court's 1983 decision in United States v. Ptasynski, 462 U.S. 74 (1983), in which the Court upheld the constitutionality of an exemption to the Crude Oil Windfall Profit Tax Act of 1980. The Act excluded "exempt Alaska oil" from the tax. In a unanimous opinion for the Court, Justice Powell rejected the claim that this state-specific exemption was prohibited by the Uniformity Clause. "The Uniformity Clause gives Congress wide latitude in deciding what to tax," id. at 85, and "'does not deny Congress the power to take into account differences that exist between different parts of the country, and to fashion legislation to resolve geographically isolated problems.'" Id. at 84-85 (quoting Rail Reorganization Act Cases, 419 U.S. 102, 161 (1974)).

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[10] Whereas the first clause of Art. I, Sec. 8, 1 refers to "Taxes, Duties, Imposts and Excises", the Uniformity Clause applies only to "Duties, Imposts and Excises," pointedly omitting "Taxes" from its reach. This has led the courts to distinguish between taxes that are subject to the uniformity rule (typically referred to as "indirect taxes") and taxes that are subject to Art. I, Sec. 9's requirement that "direct taxes" be apportioned. The status of various types of income taxes confound these catagories. See, e.g., United States v. Ptasynski, 462 U. S. 74 (1983); Brushaber v. Union Pacific Railway Co., 240 U.S. 1 (1915).

[11] Note, The Uniformity Clause, 51 U. Chi. L. Rev. 1193, 1193 (1984).

Rather, the distinction is between geographically-based tax treatment "to deal with a geographically isolated problem", which is constitutionally permissible, and "geographic discrimination", which does not address a real geographic difference and is therefore unconstitutional. In Ptasynski, the Supreme Court readily deferred to Congress' judgment that Alaska's "fragile ecology, . . . harsh environment, and . . . remote location" made the "exempt Alaskan oil" a "unique class of oil" meriting special tax treatment. Id. at 85. Said the Court: "Where, as here, Congress has exercised its considered judgment with respect to an enormously complex problem, we are reluctant to disturb its determination." Id. at 86.

Just as Congress had an ample basis for concluding that Alaska's unique problems justified special tax treatment under the Windfall Profits Tax, Congress would have an ample basis for concluding that continuation of special tax treatment of Puerto Rico under certain tax laws would address a "geographically isolated problem." Puerto Rico presents factors that Congress could surely conclude were unique, particularly in combination: special economic development needs as the State with the lowest per capita income in the country; non-contiguity with the mainland; a unique economic role in effectuating the Carribean Basin Initiative; and a long history of tax exemption, with vast sums of money invested in reliance on those exemptions. To be sure, Congress might decide for other policy reasons not to treat Puerto Rico any differently from other states for some or any taxes. But the point here is that the Constitution does not stand in Congress' way, in spite of what some have suggested. If Congress were to "exercise its considered judgment with respect to an enormously complex problem" and decide that special tax treatment were warranted, the courts would be "reluctant to disturb its determination." Ptasynski, at 86.

(ii) Congressional Precedent: The Hawaii/Alaska Transportation Tax Exemption

One need look no further than the Enabling Act concerning the admission of the two most recent states, Alaska and Hawaii, to see another highly relevant precedent for continuing certain special tax treatment that Puerto Rico currently has--a powerful Congressional precedent if not a judicial one. The Enabling Act continued indefinitely the exemption from the Transportation Tax Law which those two States had enjoyed as territories, and this exemption remains in force today. Travel between two of the forty-eight continental States is fully taxed, while travel between one of the forty-eight States and Alaska or Hawaii is mostly tax-exempt. 26 U.S.C. § 4261 et seq. (1982). This state-specific treatment, like the special treatment of Alaska upheld in Ptasynski, is justified because Congress determined that there is a "geographically isolated problem"--specifically, the "handicap which [Alaska and Hawaii] suffer because of their distance from the mainland of the United States."[12]

b. Congress may phase-in taxes for a newly admitted state

Both the Alaska exemption from the Windfall Profits Tax and the Hawaii/Alaska exemption from the Transportation Tax are examples of open-ended special tax treatment based on geography. It would also clearly be within Congress' power to phase-in certain taxes for a newly admitted state over a fixed period of years. The most obvious rationale for such a tax transition period is to avoid sudden disruptions to the economy of the new state or to the expectations of those who have relied on the prior tax regime. The Uniformity Clause would not bar this kind of temporary geographically-defined tax treatment because, in Ptasynski's terms, Congress would have identified a temporary "geographically isolated problem".

Moreover, regardless of what the Uniformity Clause might restrict as a general matter, that provision is intersected by the power of Congress under Article IV to admit "New States...into this Union." As noted above, in admitting new states Congress has long found it necessary to aid a new state in various ways during an initial period--and this has included adjusting the application of certain federal laws to it for some period.[13] There is no reason why, under its unique Article IV powers, Congress may not also temporarily adjust the tax laws and grant temporary special tax treatment to facilitate the transition from (tax-exempt) territory to (tax-eligible) state.

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[12] See 102 Cong. Rec. 5832 (1956) (memorandum of bill's sponsor), endorsed in S. Rep. No. 331, 86th Cong., 1st Sess., U.S. Code Cong. & Ad. News 1675, 1689 (1956).

c. Congress may frame tax treatment in subject terms that are favorable to Puerto Rico

The Uniformity Clause is satisfied whenever the tax "operates with the same force and effect in every place where the subject of it is found" (Head Money Cases, 112 U. S. 580, 594 (1884)). Thus, if Congress wishes to avoid defining a tax or tax exemption in explicitly geographical terms (even though Ptasynski permits it), Congress may define the tax or tax exemption in terms of a "subject" which has theoretical application throughout the United States but which is closely sculpted to suit special Puerto Rican circumstances. Congress, for example, could define a federal tax exemption in terms of the presence or absence of a particular feature of local law, such as the presence of a local tax exemption of a particular character. See, e.g. Fernandez v. Wiener, 326 U.S. 340, 359-60 (1945); Internal Revenue Code § 512(b)(15). The choice between using this "subject matter" approach and using an explicitly geographic approach is fundamentally a matter of policy and practicality, not constitutional law.

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[13] E.g., Comptroller General, supra note 7 , pp. 27-28.

d. Congress may return tax revenues directly from the U. S. Treasury to a state treasury

Congress may also choose to impose a tax on Puerto Rican goods or residents but then return the revenues directly to the Puerto Rico Treasury. This is now done with federal excise taxes on rum, and the Statehood definition proposes to continue that procedure. The definition proposes a similar procedure for federal personal income taxes during a transition period.

These proposals pose no Uniformity Clause issue at all since the tax itself "is assessed equally upon all [applicable taxpayers] wherever they are," without any geographic distinction. United States v. Singer, 82 U.S. (15 Wall.) 111, 121 (1872). The "give-back" of taxes to the State, like cash grants, land grants, and other forms of economic asssistance, is not restricted by the Uniformity Clause. As discussed above (see pp. 13-14), Congress' power to single out a state for special economic assistance is essentially plenary. "It is for Congress to decide which expenditures will promote the general welfare." Buckley v. Valeo, 424 U.S. 1, 90 (1976).

e. Congress may cushion the effect of new taxes with direct economic assistance

In a similar vein, Congress may impose certain taxes but cushion their effect by increasing the direct economic assistance discussed in Section III A 1 supra.

In sum: Congress has extremely broad constitutional leeway to structure appropriate tax policies for the new State of Puerto Rico. Puerto Rico's revenue needs and economic development needs, particularly in light of the history of its tax treatment, justify special tax rules after it becomes a State. Nothing in the Constitution bars Congress from making these appropriate adjustments.

B. LANGUAGE

The Preamble to the Puerto Rican Constitution states a central theme of modern Puerto Rican existence: "We consider as determining factors in our life ... the coexistence in Puerto Rico of two great cultures of the American hemisphere." In recognition of that cultural fact, the Puerto Rican Laws establish two "Official Languages," Spanish and English. The Laws provide that in all government departments, courts, and public offices "the English language and the Spanish language shall be used indiscriminately." P.R. Laws Ann. tit. 1, §51.

The essence of the Statehood definition regarding language is that these current legal arrangements will be preserved -- that the twin status of Spanish and English as official languages in Puerto Rico will continue. See S. 712, tit. II, §§ 17-18. The Statehood definition also explicitly provides for continuation of the current practice that Federal Government records are kept and Federal proceedings conducted in English. Moreover the definition establishes certain guarantees that State law will not discriminate against individuals on account of a lack of linguistic proficiency.

Others at these hearings will address in detail the uniqueness of Puerto Rico's cultural existence, which is both rich in Hispanic heritage and strongly intertwined with the United States. That uniqueness is one of the great assets Puerto Rico would bring to the American family of States, and one reason why the State of Puerto Rico would be a powerful bridge, both symbolically and practically, to the United States' neighbors in Central and Latin America. The twin status of the Spanish and English language in Puerto Rico is central to its unique cultural identity and experience, and that is why preserving the current status of both languages in Puerto Rico is so important to the Statehood proposal.

Two basic legal conclusions support our definition regarding language. First, there would be no constitutional obstacle to continuing the legal status of Spanish in Puerto Rico if it were to become a State. Second, there would be significant constitutional obstacles if Congress sought to restrict the use of Spanish as a condition of granting Statehood to Puerto Rico.

1. There Is No Constitutional Obstacle to Continuing English and Spanish as Official Languages in Puerto Rico

Nothing in the Constitution would prohibit a State of Puerto Rico from recognizing Spanish as one its official languages. The Constitution does not establish a language policy for the United

States but rather leaves the States and localities free to accomodate the use of languages other than English.

Throughout our history, governmental policies have reflected America's rich linguisitic diversity. The Continental Congress itself issued proclamations in French and German, while in the nineteenth century state laws were published in French (Louisiana), German (Wisconsin), and Spanish (California), and German was used as a language of instruction in the schools of Pennsylvania and Ohio. More recently, a whole range of multilingual practices have ensured that non-English-speakers are not deprived of social services or political rights. Federal law establishes bilingualism in voting and education[14], while numerous states and localities have extended its reach to other social services and have officially expressed their commitment to "acknowledge, recognize, foster and preserve the bilingual, multicultural heritage and nature"[15] of the American community. In the face of this long history and common practice, it would be audacious indeed to suggest that the Federal Constitution precludes an official role for the Spanish language in the State of Puerto Rico.

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[14] 42 U.S.C. § 1973 aa-1a (1982) (requiring bilingual voting materials in jurisdictions with substantial language minorities); 20 U.S.C. § 1703(f) (1982) (modifying the special language assistance for non-English-speaking students mandated under Title VI of the Civil Rights Act of 1964).

[15] City of Tucson Resolution No. 13904, January 12, 1987.

2. There Are Serious Constitutional Obstacles to Congressional Restrictions on the Use of Spanish in Puerto Rico

Different issues are raised by the question of whether the Constitution would permit Congress to restrict the use of Spanish in the State of Puerto Rico, if Congress chose to do so. Since no particular language-related proposal is on the table other than ours, we simply wish at this point to highlight some of the constitutional obstacles that would stand in the way of a restriction on Spanish, reserving the right to comment in more detail on particular proposals if and when they are made. I also note in passing that imposing restrictions on the use of Spanish in Puerto Rico could also create conflicts with existing federal statutes that now require certain services to provided in languages other than English.

(a) Constitutional Limitations

As Coyle v. Smith establishes (see pages 10-11 above), Congress may not impose any conditions on a newly admitted State "which would not be valid and effectual if the subject of congressional legislation after admission". 221 U.S. at 573. Federal language restrictions, however, are likely to implicate a range of constitutional rights of states and their citizens.

State sovereignty

The 10th Amendment stands for the principle of federalism which pervades the Constitution that the States as well as the Nation are sovereign entities in the American polity. While the

Supreme Court in recent years has been sharply divided on the extent to which the Constitution establishes judicially-enforceable state sovereignty limits on Congress' power, there remain certain bedrock rights that States retain to determine their basic structures and processes.[16] Coyle v. Smith itself is such a bedrock.[17] In Coyle, the Supreme Court held that a State's decision where to locate its seat of government was an essential attribute of state sovereignty, with which Congress could not interfere. Likewise, the language a political community uses goes to the heart of how the community identifies itself, organizes itself and interacts. Like the unconstitutional condition struck down in Coyle, a Congressional restriction on the use of Spanish by the State of Puerto Rico--for example, a requirement that the deliberations of the Puerto Rican legislature be conducted only in English--would trespass on an essential attribute of State sovereignty.

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[16] In National League of Cities v. Usery, 426 U.S. 833 (1976), the Court held that application of provisions of the Fair Labor Standards Act to certain state and local government functions violated state sovereignty limits on Congress' Commerce Clause powers. Nine years later, by a 5-4 vote, the Court overruled National League of Cities in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985). Anticipating that a future Court majority would itself overrule Garcia, Justice Rehnquist's dissent in that case predicted that National League of Cities "will, I am confident, in time again command the support of a majority of this Court." While the Garcia majority took a narrow approach to judicially-enforceable state sovereignty limits in Garcia, it cited Coyle v. Smith approvingly at the end of its opinion. And the Court emphasized that its approach concerned only judicially-enforceable limits, underscoring that Congress--whose members also take an oath to uphold the Constitution--has an even greater constitutional role than the courts in "protecting the States from overreaching".

[17] See footnote 16.

Equal Footing

The "equal footing" doctrine would also prohibit Congress from *singling out* the State of Puerto Rico for language restrictions. As noted earlier, while the "equal footing" doctrine does not prohibit Congress from accompanying admission with certain unique *economic benefits* to the state, it does require that new states be admitted with "parity as respects *political standing and sovereignty*," *United States v. Texas*, 339 U.S. 707, 717 (1949)--it requires equal treatment regarding "political rights and sovereignty", *id*. Restricting the leeway of a state and its subdivisons regarding language clearly concerns "political rights and sovereignty."

Since arguments for limiting the use of Spanish in Puerto Rico would also apply to the many foreign-language communities in the fifty States, any such limitation would have to be part of a nationally-imposed language policy; a policy restricting Puerto Rico alone would be unconstitutional. Congress predictably would think long and hard before it interferes with the many other communities around the country where substantial numbers of citizens speak a langauge other than English. But that is the point. By requiring Congress to treat the political sovereignty of the states in an even-handed way, rather than single out one for onerous treatment, the equal footing doctrine creates a built-in political check to prevent unjust requirements from being imposed at all.

Individual Rights

A restriction on the use of Spanish in Puerto Rico would not only risk intruding on the prerogatives of the State as a co-equal sovereign in a federal union, but might also abridge one or more of the fundamental rights which are secured to individuals by the Constitution.

At the core of the Bill of Rights is a principle of individual autonomy, vividly captured by the Declaration of Independence's phrase, "life, liberty and the pursuit of happiness". Autonomy encompasses the individual's freedom to engage in a process of cultural and political self-definition--and language, as the preeminent vehicle of communication and expression, and as the conduit of an entire culture, is central to this process.

Not surprisingly, therefore, various provisions of the Constitution protect language. These include not only the specific guarantees of the First Amendment (freedom of speech), but also the broader "liberty" of the Due Process Clause and the Equal Protection Clause. In Meyer v. Nebraska, for example, the Court struck down a state statute that prohibited the teaching of German in the Nebraska schools. 262 U.S. 390 (1923). Nebraska's asserted legislative interest--"to foster a homogenous people with American ideals"--was rejected as inadequate to justify the statute's intrusion on the "liberty" guaranteed by the Due Process Clause, which includes "the opportunity of pupils to acquire knowledge, and ... the power of parents to control the education of their own." Similarly, a restriction on the use of Spanish in Puerto Rico might well be an unconstitutional invasion of individual "liberty". Moreover, the Constitution's guarantee of "equal proection of the laws" protects "discrete and insular minorities" against discrimination. United States v. Carolene Products Co., 304 U.S. 144, 152-3 n.4 (1938); see Sugarman v. Dougall, 413 U.S. 634 (1973). Language is often a basic means by which a community defines and constitutes itself. Singling out disfavored minorities by erecting government barriers to foreign language speakers may therefore violate "equal protection" rights, as applied to Congress through the 5th Amendment Due Process Clause[18].

2. Historical Practice

While many territories had a substantial population speaking languages other than English when they joined the Union, none of their admissions provide a precedent for imposing a language restriction on Puerto Rico. Congress, in fact, did not write any language requirement into the enabling or admissions acts for Hawaii, Alaska, California, or Texas. Indeed, Congress approved without objection California's Constitution, which provided that "all laws, decrees, regulations, and provisions ... shall be published in English and Spanish" (Art. XI, Sec. 21), and which was itself published bilingually.

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[18] See Note, 'Official English': Federal Limits on Efforts to Curtail Bilingual Services in the States, 100 Harv. L. Rev. 1345 (1987); Note, Language Minority Voting Rights and the English Language Amendment, 14 Hast. Const. L. Q. 657 (1987).

The enabling act for Louisiana provided that "the laws which such state may pass shall be promulgated, and its records of every description shall be preserved, and its judicial and legislative written proceedings conducted" in English. This provision in no way restricted the use of French, and Louisiana's laws were published in both French and English from 1804 until 1867.[19]

In the period shortly after the Spanish-American War, the Enabling Acts for three Southwestern states did include some language restrictions. These provisions were adopted in a climate of anti-Hispanic feeling to which no one wishes to return--and they were adopted prior to the Supreme Court's decision in Coyle, which clarified the limits on Congress' powers in the admissions process. And in other respects as well, these provisions are not weighty precedents for a congressional language restriction here.

The case of New Mexico is particularly instructive. While the Enabling Act was written to require English as the language of instruction in public schools and to impose a language requirement on state officials, Congress' subsequent Admissions Act effectively revoked both provisions. The Enabling Act's requirement that state officials "read, write, speak, and understand" English was expressly repealed; and the English-as-language-of-instruction-clause was essentially nullified by provisions in the New Mexico Constitution that Congress approved[20]. Specifically, the New Mexico Constitution provided for the training of teachers "so that they may become proficient in both the English and the Spanish languages, to qualify them to teach Spanish-speaking pupils and students in the public schools and educational institutions of the State." (Art. XII, Sec. 8) And the State Constitution also guaranteed the "educational rights of children of Spanish descent," requiring that they "never be denied the right and privilege of admission and attendance in the public schools[,]... never be classed in separate schools", and "forever enjoy perfect equality" (Art. XII, Sec. 10).[21]

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[19] See Note, "Official English": Federal Limits on Efforts to Curtail Bilingual Sertvices in the States, 100 Harv. L. Rev. 1345, 1348 (1987).

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[20] The Enabling Act is at 36 Stat. 557 (1910). The Admissions Act is at 37 Stat. 39 (1911). For Congress' endorsement of the language-protective provisions in the New Mexico Constitution, see H.Rep. No. 33, 62d Cong., 1st Sess. 4-6 (1911). For a secondary account of admissions process which specifically treats the language issue, see J. Holmes, Politics in New Mexico, 49-54 (1967).

[21] Congress' actions with respect to the two other Southwestern states, Oklahoma and Arizona, are not relevant precedents for imposing a language requirement here. Oklahoma's linguistic minority--Indian tribes--had a special, separate status in federal law. Arizona did not have a substantial Spanish-speaking population at the time of admission; whatever other objections there may have been to such a language restriction (see above), it cannot be analogized to language restrictions that might be imposed on Puerto Rico, which would strike at the core of the State's identity.

IV. ADDITIONAL COMMENTS

A. Referendum Voting Pool

Let me just add one word about the procedures to be used in the referendum. There has been some question in these hearings about who shall be eligible voters in the referendum. Once again, I do not speak to the political issue; I understand that the Statehood Party would be receptive to a voting pool that included people from Puerto Rico on the mainland. I simply report that I have examined the Puerto Rican election laws and they seem to provide altogether appropriate answers to that question. Qualified voters are citizens "domiciled on the Island", and domicile is where the elector "has established a residence around which his personal and family activities take place and has, further, manifested his intention of remaining." This definition would permit Puerto Ricans on the mainland to vote if (but only if) they have and manifest the intention of remaining at a residence in Puerto Rico "that constitues the main center of personal, family and work activities". P. R. Laws Ann. tit. 16, §§ 3053-54.

This is essentially the standard definition of the eligible voting pool for elections in most of our states. More importantly, it has long been the rule in Puerto Rico--and the voting rule in Puerto Rico for all elections, including the most important elections that involve amending the constitution. One reason we write general election laws is that we want rules of the game that are fair regardless of the shifting political fortunes of any faction; we recognize the great dangers of redefining the rules before each particular election, when the focus may not be on what is a fair procedure but rather on what scheme will serve some partisan interests for one day only. And that is why there is typically concern when people talk about rewriting the rules just before the game is played.

B. Commonwealth Definition

This testimony does not address the other parties' definitions, for the focus today is properly on our own affirmative proposals. But before concluding, I wish to make one brief comment on the Commonwealth definition. As noted above, the central concept permeating the Commonwealth definition--Commonwealth as a "permanent union"--is a constitutional impossibility; only the Statehood option can promise permanent union. And just as the central concept in the Commonwealth definition holds out a false constitutional promise, so too does Commonwealth's central substantive proposal: the Commonwealth veto over federal legislation. (See "Subpart 4. Implementation of Federal Policy.")

The Commonwealth definition provides that the Governor of Puerto Rico may veto a Federal "statutory law or provision thereof" that he determines is inconsistent with the "principles of Commonwealth" and does not have "proper regard for the economic, cultural, ecological, geographic, demographic and other local conditions of the Commonwealth of Puerto Rico."[22] This arrangement is clearly unconstitutional. INS v. Chadha, 462 U.S. 919 (1983), the Supreme Court decision striking down the "legislative veto", reaffirmed some of the basic structural principles of our system of government which this "Commonwealth veto" defies. Once a statute is signed by the President, it becomes law. It (and administrative rules promulgated by the Executive Branch) can be repealed by a new statute that the President signs, but it cannot be set aside by Congress alone, and certainly not by the Governor of a state or territory. It makes no difference that the Commonwealth veto provision gives Congress 60 days to reinstate the law by enacting a new statute containing a finding that there is an "overriding national interest" supporting the law. The prior law would be nullified as soon as the Governor vetoed it, and an additional enactment would be necessary to revive it; absent such a reenactment, the law that had already been duly enacted would be a dead letter in Puerto Rico. It would have been repealed or amended without both houses of Congress passing legislation and without the President having the opportunity to exercise his veto under the Presentment Clauses of the Constitution. As INS v. Chadha reaffirmed, there is no place for such an arrangement in our constitutional structure.

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[22] Analogous powers are given the Governor with respect to administrative rules promulgated by the Executive Branch. Moreover, the Governor's veto power (at least over statutes) is "[i]n addition to the judicial determination of the inapplicability of Federal laws" under the same extraordinarily vague and broad "standards" available to the Governor. The courts are thereby given a truly at-large policy-making role hard to square with an appropriate judicial function, but reminiscent of the Council of Revision that was rejected by the Framers of our Constitution. See G. Gunther, Constitutional Law (11th ed. 1985), p. 15.

Thank you, Mr. Chairman and Members of the Committee, for this opportunity to appear before you.

The CHAIRMAN. Professor Gewirtz, I think your statement is more than convincing on most issues. I have a question really only about 936. I think there is no doubt at all that we can give grants and aids and help to Puerto Rico and can accomplish whatever it is in a number of different ways.

My question really is whether or not there is ambiguity left with respect to this issue on the uniformity clause and section 936.

I have the Ptasynski case, and it is very clear there that they say a tax is uniform when it operates on the same force and effect in every place where the subject of it is found. And they go on to say that sometimes there are geographical differences which the Congress may take into consideration.

Now, the subject of the tax in the Ptasynski case was oil, and the oil was different in Alaska than here because there it was discovered in a hostile environment and had to be transported over an expensive pipeline.

The subject of the tax in 936 is corporate transactions. Those corporate transactions may not be different. What is different with respect to 936 is the need of the island.

The Court goes in Ptasynski to talk about when the Congress frames a distinction in geographic terms, although the Congress has wide latitude, that where the Congress does choose to frame a tax in geographic terms, we will examine the classification closely to see if there is actual geographic discrimination.

Now, doesn't that suggest that perhaps there is a difference between the incidence of the tax? In other words, if you can define the thing taxed in different terms, you have wide latitude, but where you simply want to discriminate geographically in order to give money to one state over the other, unless you can identify a difference in the thing taxed, the incidence of the tax, doesn't that suggest some ambiguity here about the reach of those decisions?

Professor GEWIRTZ. I see the argument, but I think it is not right.

The thing that was taxed in Ptasynski was the oil. Oil is oil. What was different was the surrounding context, the geographic problems in the surrounding context. And so too in this situation. It may be that the corporate transactions are the same, but the thing that Congress could I think easily determine in its judgment is that the context was different.

The CHAIRMAN. Suppose, let's say for example, that I was able to talk the Congress into saying that income tax rates shall be lower in my State of Louisiana because unemployment is high and just say the income tax shall be 28 percent in the rest of the country and 15 percent in Louisiana. Would that be permitted under Ptasynski?

Professor GEWIRTZ. Well, I think we would need to know more. I think your example suggests that it is not very plausible that that would happen because it is not very plausible that people in Congress would conclude that there is something really unique about Louisiana for these purposes. But when it comes to something like 936, I think a lot of Members of Congress would conclude that there is something very different about Puerto Rico's history with regard to that which would make the immediate elimination of such a tax have a very different impact on Puerto Rico than in other situations. And, remember, the proposal that we are making with respect to 936 is simply for a reasonable phaseout which takes account of the unique history of Puerto Rico.

The CHAIRMAN. What does the Court mean when it talks about actual geographic discrimination?

Professor GEWIRTZ. I think it means that if Congress doesn't have a reason, has not exercised its considered judgment. I did try to mark some of those passages in the opinion. And I think the flavor that comes through there loud and clear is that when Congress is trying to deal seriously with a complex problem in making a considered judgment, the Supreme Court is not going to intervene and say the Constitution stands in its way.

And, in fact, the Supreme Court never has, never. It has never struck down a tax on uniformity grounds. It is because the Supreme Court appreciates that these are very difficult problems and that as long as Congress is doing its best to legislate and to solve those problems in a way that makes policy sense, it is permitted to do so.

The CHAIRMAN. What again is the Court saying when it says, "A tax is uniform when it operates with the same force and effect in every place where the subject of it is found"? What do they mean "the subject of it"? Don't they mean that the subject has to be different as opposed to the need of the place for revenue?

Professor GEWIRTZ. I don't think the subject has to be different in the sense that oil has to be in one place and coal in other place. What has to be different is there has to be some geographically different problem in Congress' judgment. I think that is all that it means. That sentence has to be read in context of everything else in the opinion.

My core point, remember, is to just get this issue of the Constitution out of the picture so that we can have a serious policy debate about what is the right thing. My point is that if you conclude that it would be best for Puerto Rico and best for the United States with a new state of Puerto Rico to have some transitional continuation of 936, nothing in the Constitution, nothing in the Supreme Court of the United States should stop you or should confuse the issue.

The CHAIRMAN. Well, I think you are probably right, but I'm a little bit concerned about that. I am quite sure that it is at least ambiguous enough that there would be a vigorous lawsuit brought and tested. I would rather have your side of the case certainly I say than my side. I play the devil's advocate with you. I don't even believe that necessarily myself, but I think there is a question. There is certainly a distinction between this situation and the Gewirtz—I mean, the Ptasynski case.

Professor GEWIRTZ. I'm not going to be the plaintiff in that lawsuit, Senator Johnston. [Laughter.]

Let me just say in closing it is worth keeping in mind I think this is a unanimous opinion. I really think that is significant. We know that the Supreme Court—when there are little quibbles and interesting issues which will divide the Court in the future, we get separate opinions. I can't tell you how many Supreme Court opinions these days have three, four, five opinions. This is a unanimous opinion in both its literal wording and in the spirit of the opinion.

Look at the last paragraph about spirit of deference to Congress. I really think that there can be no reasonable disagreement about the scope of this opinion.

The CHAIRMAN. I think you are probably right.

Senator McClure, do you have a question for the Professor?

Senator McCLURE. Mr. Chairman, thank you very much.

I want to look for just a moment at some of the economic conditions which you have suggested, Governor. I agree with the statement that has been made that Congress has broad discretionary authority to establish the economic conditions, particularly in the transition. And I agree with the expert that just testified that I think it is a political question rather than a constitutional question. So, let's address it on a political basis, not a constitutional basis.

One of the things that was done in the case of Alaska, as you have already pointed out, was to grant to the state a large land grant. Probably the most significant lands or interest in lands in Puerto Rico are the continental shelf lands, the offshore lands. And I assume that you have suggested a transfer to the state of Puerto Rico the use rights, but not the title. Am I correct?

Governor ROMERO. That's correct, sir.

Senator McCLURE. And what you are talking about there I assume would include by whatever device might be stated the ability to exploit the natural resources in those lands.

Governor ROMERO. That's correct, Senator.

Senator McCLURE. That would include the fisheries in the waters or on the bottom of the sea. It would include the exploitation of minerals on or under that continental shelf or the submerged lands. Is that correct?

Governor ROMERO. That's correct, Senator.

Senator McCLURE. So, use rights is a little broader than just saying you have the right to use it. You would also have the right to remove minerals, including oil and gas, if found.

Governor ROMERO. That's correct, Senator. We have noticed that our wording perhaps would require an amendment of those words.

Senator McCLURE. I want to make sure that I understand what it is you are saying and what it is you are suggesting because I think we will have to be pretty precise about that. And, of course, there will be a great deal of debate.

I assume that it also means that the Federal jurisdiction in those areas would remain with respect to the environmental protection aspects of U.S. policy.

Governor ROMERO. That's correct, sir, and also the Federal jurisdiction regarding the protection and the surveillance of those areas.

Senator McCLURE. Is it your intention at all to deal with the question of innocent passage?

Governor ROMERO. I would ask you, Senator, to explain. I am not familiar with that phrase and what the legal meaning is.

Senator McCLURE. Would you intend to regulate the commerce which might pass through the area?

Governor ROMERO. No, not whatsoever, Senator. That is why I said the jurisdiction and the control and policing of those areas would remain in the hands of the Federal Government, the jurisdiction of the Federal Government.

We would, of course, feel that we would have a concurrent jurisdiction in terms of policing the area for drugs and contraband and other such matters in cooperation with the U.S. Department of Justice and the U.S. Coast Guard and whatever other Federal agencies were involved.

Senator McClure. Well, if I look at section 5(d), it would extinguish all Federal rights to lands transferred under subsection C. Would you consider increased flexibility in the determination of Federal need so that the Federal Government could transfer unneeded interests while retaining needed interests?

Governor Romero. Yes, sir, we would be happy to have that language included. We have no problem whatsoever with that language.

Senator McClure. If you look at section 6(d) of the act, it says on the face of that subsection—and I'll just read starting at line 7 on page 9—"Notwithstanding any other provisions of this act or any other provision of law, in compensation for the lands now held by the United States," et cetera. Is it your intention that it be strictly in compensation for the lands now held by the United States, or is this also intended to be a device by which economic assistance is granted?

Governor Romero. That is intended to be a device by which economic assistance is granted.

Senator McClure. So, it shouldn't necessarily be tied only to compensation for the lands retained.

Governor Romero. That's right. No, we are looking for ways to have some kind of special compensation for the first few years of adjustment.

Senator McClure. Maybe if that is the case, it would be better if we just dropped the reference to "compensation for the lands now held by the United States".

Governor Romero. We have no objection to that whatsoever.

Senator McClure. You would have no problem with that.

Mr. Chairman, as I indicated to you earlier, I have to leave a little earlier but I did want to get those particular questions asked before I have to leave. I have another 15 minutes or so before I have to leave, but I do very much appreciate your willingness to allow me to ask questions at this point.

The Chairman. Before you get away, Senator McClure, I would like to discuss and have a little dialogue with you and with the Governor and his colleagues on this question of the transition period. It would be my thought that, while the transition period on taxation will ultimately be decided by the Finance Committee, this partakes a little bit of dual jurisdiction because we have jurisdiction over status, they over taxation. And we would at least want to give our guidance and recommendations at the very least and probably report legislation that contains that. Whether it is called reporting it or recommending it I don't know. We are certainly not going to have any problem with our friend, Senator Bentsen, and his committee on that. But we will make recommendations.

And it seems to me, first of all, I think you probably know that the 25 year transition period is like when I used to be a trial lawyer and you would sue for $1 million and hope to get a fraction of that.

Senator McClure. You never did that.

The Chairman. No. I would always sue for the small amount. [Laughter.]

In any event, I am sure that you recognize that we can't grant 25 years.

It would be my thought that there would be a period in which 936 would not be affected at all, not a long period, but at least to give time enough for the Finance Committee to act on special exceptions, transition rules. And I have in mind a short period of time, maybe a couple of years, with a phaseout period to begin after that.

Whatever that period of time is, don't you agree that during that period of time that the full benefits as in food stamps, et cetera, should not phase in at that time, in other words, to give sort of symmetry of benefits and burdens? Whatever that period of time, whether it is two months or 10 years—I think you wanted 15 years of a transition period.

Governor Romero. Right, transition.

The Chairman. Whatever that period of time, would you not agree that during that time there should be no full Federal benefits?

Governor Romero. Sir, I think that although initially when you say that, it sounds like a fair exchange, if it is looked upon from an economic point of view of government vis-a-vis government, then I would say of course. If it were up to me to negotiate it and from a government-to-government point of view, I think that you have to take into consideration your proposal.

However, Senator, I would like for you and the members of the committee to consider the following. The commonwealth economy has, unfortunately, been structured around a tax privilege. Being structured around a tax privilege is not healthy because a tax privilege is only temporary to give opportunity for economic development, and it should always be looked upon as a transition measure which eventually will be ended.

However, the commonwealth has taken the position that it cannot survive without the tax privileges so that they have extended it and extended it and never bitten the bullet to try to put Puerto Rico's economy up on a more solid foundation, which I believe statehood will definitely do.

But now we have the problem that those privileges, exemptions, benefit the very, very wealthy corporations. And in order to make up for the loss of revenue, not only to the Federal Government, but to Puerto Rico—if you will see the General Accounting Office report where the nation looses about $2,100,000,000 in foregone taxes, the government of Puerto Rico is foregoing $2,000,340,000 in taxes. So, in order to make up for that tax that it forgoes from those very, very wealthy corporate citizens, our local tax in Puerto Rico is extremely unfair on the poor and the workers. So, we start paying local income taxes in Puerto Rico at a level of $8,500 for a family of four, whereas in the Nation you don't pay Federal income taxes with a family of four until approximately $14,000. The middle class with $25,000 to $30,000 income in Puerto Rico will be paying anywhere from $800 to $1,500 more in income taxes than they would if only Federal income taxes were applicable.

Then at the same time because those multi-millionaire corporations have these tax privileges, which I think has been good in many ways to Puerto Rico to allow its development, yet at the same time the poor people of Puerto Rico, the citizens that would not be paying taxes, carry the burden of less compensation.

The CHAIRMAN. I understand that.

Governor ROMERO. Now, we are asking shall we have them go on for a few more years carrying that burden. Is it fair to put that burden on them? Well, there is something about the sense of justice in that. I have qualms about saying yes to what you say.

But I am sure that above all, Senator, the people of Puerto Rico want to have the right to vote and the right to representation. They want to be full-fledged citizens, and they want to have their dignity. They want to pay their share. I believe that if we asked them, they might say, well, we will forego that too.

The CHAIRMAN. There are all kinds of compensation provisions in here. You stated a moment ago that the use of the Federal land—that that was really a grant. You would want a grant for that. Undoubtedly there will be expenses and grants we would have to make. But in addition to that, you are suggesting that all the full Federal benefits come in and that you continue to enjoy 936 and not pay taxes for 15 years. Then you negotiate, and if we can't negotiate, then you have 10 more years. Twenty-five years is just out of the question.

It would be my judgment just sort of a Kentucky windage estimate that the total period of transition would not last beyond 10 years, and that is just my feeling.

Governor ROMERO. Senator, I think that all economic issues, as I said, can be negotiated. All economic issues. I think it is a matter if the Congress makes the decision, yes, we would want to see Puerto Rico as a state, and that is a political decision, and that political decision is made, there is no problem that we will reach the agreement in economic adjustments.

The CHAIRMAN. And let me state that Senator McClure and I may sound stingy, but we are probably more Puerto Rico-philes and greater lovers of Puerto Rico than some people you have in Puerto Rico. I have no doubt on that. [Laughter.]

And we want to be generous. We want to see the island prosper.

Governor ROMERO. I know that, Senator.

The CHAIRMAN. But I also know that if you overload this legislation, you can't even get it on the front steps of the Capitol.

Governor ROMERO. I know that, Senator. And that is why we want to be able to work together.

It is very difficult, Senator, for us to work out a proposal when we don't know the positions of the Treasury Department, for instance, when we don't know the positions of the Senate Finance Committee or the Joint Tax Committee. When we know those, we can sit down and work them out.

Good partnerships, Senator, are always those partnerships that are good for both sides. That is a good business. Statehood is a good business because it is good for the Nation and it is good for Puerto Rico.

We will stop these handouts that grow and grow and grow and that the people of Puerto Rico don't contribute to the treasury. We will put a stop to that.

The CHAIRMAN. Well, now, don't speak too passionately about doing away with handouts. [Laughter.]

Governor ROMERO. No. I believe in handouts for those that need it. No, I'm sorry. I believe in that.

But I also think that those of us who can carry the burden, those of us who can contribute and pay our way, it is to the dignity of the people of Puerto Rico that we pay our way. We don't want to be an island of parasites. We don't want to be leeches. We want to be full-fledged citizens and we want to be able to pay. Just all we need is some period of adjustment, and I think that we can work that out. I have no doubt about that.

The CHAIRMAN. Is there any minimum period that you would consider essential here to make this thing work?

Governor ROMERO. Senator, I would not put a minimum or a maximum. I think it is workable.

Senator MCCLURE. Mr. Chairman, may I intervene at that point? I think one of the things we want to avoid as much as possible is being imprecise, because I do not think you should be permitted any more than other parties should be permitted to hold out to the people of Puerto Rico vague, generalized promises for the future which have no reality.

The other side of that, however, is as pointed out very forcefully in the statement heretofore filed with this committee, that there can be various tests of taxation and benefits and economic assistance based upon geographic considerations which can be upheld by the courts of this country based upon a political decision of the Congress of the United States. So even if there is a limit to either the phasing in of benefit levels or phasing out of tax treatments, that is not necessarily the end of the consideration of such measures. They could very easily be done as other measures are done for other geographic areas of the United States.

And I do not say that to hold out a vague, generalized promise, because there is no promise in that, but just to point out that possibility.

I think that also indicates that while you have a justifiable desire for as much certainty as possible with respect to both of these issues—and we have tried to extend it to you as far as possible—there are limits to how far we can do that. Almost everything that government does is subject to reevaluation and change. And if we enact changes that apply to the other states, they probably also will apply to Puerto Rico if Puerto Rico becomes a state. At least Congress would be compelled to make a discreet, reasoned judgment as to why Puerto Rico should get different treatment. And there is the opportunity to make that judgment, but also the requirement to make it.

I agree with the Chairman that I do not see that you will get the guarantees on tax treatment for 25 years. I do not know what that figure is. I will be somewhat less than that. I am certain that the same thing is true with other provisions too.

We are going to look at needs. I strongly believe in that. I appreciate the statement you made with respect that you want to be contributing members of our society, not just receiving members of society. And you will have some of both in your state, as we have in all of our states. If you become a state, that indeed would be true of you as well.

We will try to write into this as much certainty as we can, but recognize certainly there are limits to how much certainty we can provide for what periods of time.

Governor ROMERO. I understand that, Senator. That is why I say it is difficult to come to any precise periods or amounts until we sit down because we have to also know what is available, what are the parameters also that the committee is considering. And I think once we know that, I think it is a matter of sitting and taking a look at what is fair, taking a look at the Nation's needs, the budgetary needs and working out a solution. It is very difficult.

Senator, you complained you filed for $1 million when you thought you could settle for $50,000. But you didn't go and say the first time, well, I am willing to take $100,000 because immediately they know they don't have to give you $150,000.

The CHAIRMAN. And they usually didn't. [Laughter.]

Governor ROMERO. So, we are looking for the most that we can get. You know that, we know that. And that is what we are trying to do. We are trying to do the best for the people of Puerto Rico, but I understand the needs of Congress. But it is very difficult for me at the table to sit down and say this is the minimum we will accept, but I think we can work it out.

The CHAIRMAN. Well, we are simultaneously making a judgment here on what is fair to Puerto Rico, what would give Puerto Rico an ability to survive, what is fair to the United States, and also what we can pass in the Congress.

Senator MCCLURE. And may I add one thing to that? I think we are also trying to make certain that whatever economic benefits are guaranteed under any one of the alternatives contained in this legislation, that they be fairly competitive proposals. It is not our purpose here to construct one package that has a very apparent and automatic advantage over one of the others.

Governor ROMERO. That is music to my ears, Senator. One of the things I was going to mention is the fact that up till now the position has been traditionally that there seemed to be a lot more willingness to give to the commonwealth than it would be to give to a state if Puerto Rico wanted to go that option. And we have to suffer cutbacks. What you have said, as I said, is music to my ears.

Senator MCCLURE. If we get too generous on the commonwealth side, the State of Idaho is going to secede from the Union and become a commonwealth. [Laughter.]

The CHAIRMAN. Well, there will be vast differences between the proposals, but hopefully not in the eyes of those of us who put them together. That is for the people of Puerto Rico to decide because there are vast differences. There are risks in everything you do, but that is for you all to argue about.

One more thing I would like to talk about before you get away, Senator McClure, and that is this issue of language.

Governor ROMERO. Senator, before we get into that, I think Don Luis would like to make a statement to say something about what we have been discussing.

Governor **Ferre**. I would like just to add that, of course, as I said in my original statement, what we want to do is to get away from this trend that we have been in, that the tax exemption was the necessary way to survive in Puerto Rico because we never got to the point where that should be a transitory thing that should disappear. Now, this is the time when this must be done. We must do it because we want Puerto Rico to be able to stand on its own. Now, we will need, of course, some transitory help, but no more than necessary so we can stand on our own feet. That is what we want.

The **Chairman**. Before we get to the language and before we leave this, I want to ask your tax expert. As a mechanical matter, is the language—I think you have it and the independence group as well—where you phase out 936—who is the tax man—10 percent a year on a straight line basis mechanically possible? I mean, whatever the percentage and the number of years, can it be done like that?

Mr. **Carlo**. Yes, Senator. Our proposal calls for keeping 936 the way it is for 10 years and phasing it out over the next 15 years.

The **Chairman**. Well, you negotiate for five years, and then phase it out over 10 years, don't you?

Mr. **Carlo**. No, sir. Ten years is the proposal for the 936.

The **Chairman**. Do you think it is important to have a period of time where there is no change?

Mr. **Carlo**. It appears to be very important in terms that these corporations have tax exemption grants right now which begin at 10 years, and some of them go as high as 25 and even higher in some instances. Then they also have additional periods that they can be extended. So, we are talking about a 25 year total period of which 10——

The **Chairman**. You understand there is no way we can approve that period of time. Just mechanically—I'm not asking is this a good thing. I'm not even suggesting that we would do it, but if we wanted to say you have a transition period of one year and a phaseout period of three years, 33 percent each year for three years, if we wanted to do that, would that be mechanically possible? Or pick whatever percentage or number of years you want.

Mr. **Carlo**. I think the way to phase it out should not be a problem. It can be worked out mathematically. It should not be a problem.

What is really at stake is, like the Senator said, you have the interest of companies that have invested in Puerto Rico for many years to be dealt with. That has to be respected. And we also have the interests of Puerto Rico and of the U.S. budget. So, you are dealing with very complicated issues here.

We don't have the data right now on the U.S. budgetary side nor the access to that information. We could work together with your staff and work whatever program is necessary out to make it feasible.

The **Chairman**. Well, I know there is this problem of repatriation of income, but there are no legal problems presented that you can think of other than the policy question? That is really what my question is.

Mr. **Carlo**. I believe that is so, Senator. There are no legal problems. The mechanics and the programming for this could be worked out with the committee staff, and with our own experts we can work whatever terms are necessary and number of years and percentages decreasing for the phaseout.

The **Chairman**. Senator McClure has to catch a plane to Puerto Rico or wherever you're going. [Laughter.]

Senator **McClure**. Thank you very much.

Governor **Romero**. Thank you, Senator.

The **Chairman**. We have a problem—I say a problem—a special circumstance of CBI investments that would be thought to serve a special need in the CBI. What should be the mechanism to determine what is a special circumstance among 936 corporations?

Mr. **Carlo**. I think whatever Congress decides it wants to grandfather for CBI purposes. There are approximately $15 billion in 936 funds in the Puerto Rico economy, which is one of the problems with 936. They don't have anyplace to invest these funds. There is an enormous amount funds available. And depending on who you speak to, some people think it has been successful in getting some of this investment into the Caribbean Basin countries. Others, if you look at the figures, it doesn't look like it has been very successful.

But I believe we can grandfather that program and work the 936 section as it is now and the investments and advantages with the CBI and maintain those two in some way and fashion, at least over the period of time of the phaseout.

The **Chairman**. As a mechanical problem, do you think it might be just as well to have a period of time within which no change is done and no special statement for CBI investments and let the State Department or whoever it is work with Treasury and then recommend some special legislation before 936 kicks in? Do you understand what I mean?

Mr. **Carlo**. I would believe that could be worked out.

The **Chairman**. Rather than try to write language that says under certain circumstances, they can grant an exemption.

Mr. **Carlo**. That's right. We have not addressed the CBI investments. We thought that by just leaving 936 effective for 10 years, that would cover the industry that wants to continue investing funds in the Caribbean Basin, which is really the way the 936 works. The 936 funds are invested in the Caribbean Basin program at twin plants.

The **Chairman**. How much of the roughly $15 billion has gone through the CBI process? Do you know?

Mr. **Carlo**. I do not have the exact figures, but maybe Mr. Famadas, the economist, can tell us, if he remembers. It is a very small part.

Mr. **Famadas**. Senator, I do not have the exact figure here, but the order of magnitude is about $150 million.

The **Chairman**. It's $150 million. So; we are not talking about a very big problem there.

Now, you have that the income from Puerto Rican securities are exempt from tax until maturity. Income derived from securities which under relevant Puerto Rican and Federal laws is exempt from commonwealth and Federal income tax shall continue to be fully exempt from taxation until maturity.

Why should that be treated any differently from—suppose we said income derived from securities under relevant Puerto Rican and Federal laws shall be exempt to the extent that it would have been if those securities were issued by a state.

Governor ROMERO. Because they are already issued, Senator. People have paid for those bonds and securities on the basis of the triple tax exemption. So, to say now that a tax is imposed on them might create a dislocation in the market. The reason, we felt that it was only fair that what has been sold under certain conditions, that those conditions be maintained for those bonds and securities.

The CHAIRMAN. Well, again, the Finance Committee and Ways and Means are going to have to deal with that.

Now, you have an exemption on Puerto Rican bonds, do you?

Governor ROMERO. Yes.

The CHAIRMAN. Those are those issued prior to statehood.

Mr. CARLO. Prior to date of admission. We are just grandfathering those securities, those bonds, Senator, that are out there already sold. They would lose their tax exemption unless we grandfathered that tax exemption and only until maturity. It is not new bond issues, but those that already have the special tax exemption that are grandfathered under this section.

The CHAIRMAN. Now, you protect coffee and rum taxes, the rum tax rebate.

Governor ROMERO. That's right.

The CHAIRMAN. What does that run?

Governor ROMERO. The rum taxes? I do not know. The last time I looked at them they were about $200 million. I don't know what they are now. Nelson, do any one of you remember the latest figures?

Mr. FAMADAS. We will get them for you. Well, again, the order of magnitude is about $350 million. I will give you the exact figure in a second, Senator.

The CHAIRMAN. I think the rum tax rebate would be troublesome.

Governor ROMERO. They are rebated now, Senator.

The CHAIRMAN. I know, but you are a commonwealth now and not a state. My own reaction is that coffee because you could put a tax on coffee wherever produced. It happens to be produced only in Puerto Rico. Rum can be produced anywhere, and I think you would do better to have sums of money each year as a block grant for transition rather than a special circumstance of rum tax. That is just my reaction. Again, that is not our primary jurisdiction.

Governor ROMERO. Senator, we looked at that from the same point of view that the concession of the seals in Alaska were done where Alaska was allowed to keep a substantial part of the profits from the sales of the seals and also from the windfall profit taxes in oil, the special concessions to Alaska.

Since rum happens to be such an important part of our revenues in Puerto Rico from the return of the excise taxes throughout the years, we felt that this was an important and significant part of the existing economic and fiscal situation. It has been accepted for the years. And we have no constitutional problems. And I would like to have Mr. Gewirtz discuss that.

Mr. FAMADAS. Senator, the exact number is $203 million. My mistake.

The CHAIRMAN. It's $203 million? Staff just gave me excise tax rebate to Puerto Rico in the fiscal year 1990 budget is estimated at $230 million.

Mr. FAMADAS. This is the 1988 actual rebate, $203 million.

The CHAIRMAN. In 1988, it was $203 million.

Professor GEWIRTZ. All that I wish to add is that there certainly is no constitutional problem with continuing the rebates of the rum tax. Under the Uniformity Clause, the tax would still fall uniformly. And there is no constitutional problem in rebating that on a selective basis.

And as Governor Romero said, the precedent of the Alaska seals, as well as other kinds of concessions that are made, I think are sound precedents.

The CHAIRMAN. The problem is not a constitutional one it seems to me. It is just a policy question. But I understand the argument and I understand the dollars. We will just have to wrestle with that ourselves.

Now, let's talk about the Spanish language. Let me ask you first of all. When you say the Commonwealth of Puerto Rico is assured of its reserved state right under the Constitution to continue to maintain both Spanish and English as its official languages, what is an official language?

Governor ROMERO. Well, the Federal Government in Puerto Rico and everywhere else, the official language is English and it will have to be English. There won't be any changes in that. English in the judiciary, the executive, the legislative.

Locally in our local legislature and our local judiciary and the executive, the official language is both except that Spanish is the language that is used, not English. However, if someone needs a translation or wants a translation, a translation is provided.

I think that this administration has been quite remiss on translations. The decisions of the Supreme Court of Puerto Rico used to be published in English all the time. Now they have fallen back, way, way behind in the publication of the translations.

But I think we would put a big effort on having Puerto Rico be bilingual. In other words, everything that is officially done, particularly decisions of the Supreme Court and laws, translations will be provided for immediately. There will be official translations and other documents that were necessary for anyone will be translated.

We feel that the teaching of both languages in school is necessary, but also that the teaching in Spanish is necessary so that our people learn better. It is difficult to start teaching in English to people who go to school and they have never listened to anything but Spanish by the time they get to school.

First of all, we have to improve our education in Puerto Rico which is very important to us.

The CHAIRMAN. Let me interrupt, if I may, Governor.

Governor ROMERO. Sure you may.

The CHAIRMAN. The language here seems to contain three different ideas which seem to me at least to be conflicting.

The first idea is Spanish and English are official languages. I am not sure what that means, but it is what it says.

The second idea is all records and proceedings of all agencies, departments, offices and courts of the United States Federal Government operating in Puerto Rico shall continue to be kept in the English language as heretofore. I guess that is only the Federal Government. Is that right?

Governor ROMERO. That is correct, sir.

The CHAIRMAN. And the Commonwealth of Puerto Rico's Official Languages Act making Spanish and English languages is a state prerogative protected by the Constitution.

Number two is a separate idea that in Federal courts you have to have the records in English. But the first and the third seem to conflict. Spanish and English are official, but it is a state prerogative as to which one to protect or use. Is that correct?

Governor ROMERO. That is correct, sir.

The CHAIRMAN. So, really when you say English is an official language, those words don't mean anything. What you are saying is it would be a state prerogative.

Governor ROMERO. Yes, sir, but also the other one would be official in the sense that whoever does not know any Spanish can do it in English. So, in other words, in Puerto Rico in local courts, you could file your documents in English and then the courts have to make the adjustments to translate those documents.

The CHAIRMAN. Well, this says it is a state prerogative.

Governor ROMERO. Right.

The CHAIRMAN. And if the state said that we will hear you in English if you are willing to pay for it and hire your own interpreter——

Governor ROMERO. That is the interpretation, Senator, I think that every American citizen should be entitled to have the protection that he would not have to incur an additional cost to litigate his rights.

The CHAIRMAN. I know that is not what you had in mind here, but I am just wondering about what does official language mean and what does state prerogative mean? What prerogative would the state have to allow or disallow? What duties would they have?

Governor ROMERO. Further down in the bill there is some wording to the effect that there could be no discrimination whatsoever because of language. I do not remember now exactly the clause, but it is further down in the bill.

That is section 18 in the bill, on page 18, Senator. It says: "The state shall never enact any law restricting or abridging the right of suffrage on account of race, color, previous condition of servitude or ability to read, write, speak and understand any language sufficiently, and the rights, privileges and immunities of citizens of the United States shall be respected in Puerto Rico according to the provisions of paragraph 1, section 2," et cetera.

We could amend that language to make sure that also it would be broader language in terms of protection of the right of any American citizen to do whatever—official or whatever using the English language. We have no qualms that with whatsoever. I think it is necessary, and I think it is important. If there is a short-coming in our draft, we would be very, very willing to accommodate and look for the proper language so that our meaning is clear.

What we want to protect, Senator, is the fact that Puerto Rico is a Spanish speaking island. That is our native tongue. The first language we speak is Spanish. I do not think it would serve any purpose to anyone to try to legislate a language on any people. I think it is important for us to be bilingual.

I have visited just about every single public high school in Puerto Rico, and I sat down with the students. And at every single high school, one of the objections, one of the problems, that they have posed is the fact that English is not properly taught, that they want to have an opportunity to learn English better, that they need better English instruction. Now, that is an administrative fault, and I think we want to correct that and we want to intensify the teaching of English.

I think that yesterday I spoke about a book that was being used by the present administration regarding the—like a brainwashing of Puerto Rican children to show that Puerto Rico is a separate country. I have a copy of that booklet that I would like to introduce for the record where it states in that booklet—to get an idea what is happening in Puerto Rico. It would not happen as a state. This is the first book of Puerto Rico translated excerpts. It says: "Who am I? I'm a Puerto Rican. My family is Puerto Rican. Puerto Rico is my fatherland, my country. Puerto Rico is a country of the Caribbean. Other countries like Puerto Rico in the Caribbean"——

The CHAIRMAN. Let me ask the Professor. I want to get here at what this section means where you talk about rights, that privileges and immunities of the United States shall be respected in Puerto Rico according to the provisions of paragraph 1, section 2 of Article IV of the Constitution. Do you have Article IV of the Constitution there?

Professor GEWIRTZ. I do. Like Justice Black, I carry a pocket Constitution which is made available courtesy of this Congress.

The CHAIRMAN. Is that the privileges and immunities clause?

Professor GEWIRTZ. Shall I read it to you?

The CHAIRMAN. Yes, please.

Professor GEWIRTZ. "Citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." That's it.

The CHAIRMAN. Now, what did the slaughterhouse cases say about the privileges and immunities clause?

Professor GEWIRTZ. The slaughterhouse cases concerned a different privileges or immunities clause which was in the Fourteenth Amendment which speaks of—I can read that one. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The CHAIRMAN. Article IV deals with privileges and immunities of citizens of the United States too, doesn't it?

Professor GEWIRTZ. Article IV is generally understood to be what might be called a nondiscrimination provision, which is that a state may not discriminate among citizens of another state.

The CHAIRMAN. Didn't they effectively write the privileges and immunities clause out of the Constitution in the slaughterhouse cases?

Professor GEWIRTZ. Not Article IV.

The CHAIRMAN. No. They did in the Fourteenth Amendment.

Professor GEWIRTZ. Yes, effectively, although they did keep a residue of fundamental rights, a very small residue of fundamental rights which no state could abridge.

But what is different about the privileges or immunities clause in Article IV, which is quite lively these days actually in Supreme Court cases, is that it is a nondiscrimination provision. You can't have rules about people from other states which disadvantage them, at least to a certain extent. So, the Article IV privileges or immunities clause is nondiscrimination.

The CHAIRMAN. Due process and equal protection.

Professor GEWIRTZ. Right.

The CHAIRMAN. Which I think are different. The privileges and immunities are you can't take away that which the United States has given.

Professor GEWIRTZ. That every citizen has.

The CHAIRMAN. Due process is that you can't take away something you give somebody else, if I am making the distinction correctly.

In the slaughterhouse cases I thought they said in effect that there are no privileges and immunities. They didn't write out the Fourteenth Amendment, due process or equal protection, but they said in effect there are no privileges and immunities. So, I am wondering—I know that is not what is intended here, but——

Professor GEWIRTZ. Well, the reference here is to this other privileges or immunities clause which the slaughterhouse cases have nothing to do with. This is really a provision that addresses whether the state of Puerto Rico with respect to language or other things could discriminate against citizens of other states. And that is really all that is being said here, to be honest. I think it is something that as Puerto Rico as a state would be obliged to have in any case because——

The CHAIRMAN. The question is what are they obliged to have. Is it a privilege to speak English?

Professor GEWIRTZ. I do not think that is—I think the main thrust—maybe if I could just take one step back and try my attempt at what I think is going on in this whole section.

The reference to reserved state right in section 17 is a reference to a famous Supreme Court case called Coyle v. Smith which is one of the few Supreme Court cases that address constitutional restrictions on Congress during the admissions process. And what happened there was that Congress imposed on the new State of Oklahoma a requirement that it not locate its state capital in a certain place until a certain year. The Supreme Court said Congress may not do that, that there is a state sovereignty limit on what Congress may do when it admits a new state. It may not single out the State of Oklahoma and tell it where it can't put its capital, that that invades something very fundamental to the way the state is constituted. And that decision survives. It is an important decision.

And in referring to reserved state right in section 17, I think the Governor is sounding the note that the state of Puerto Rico, like Oklahoma, has certain residual state rights which permit it to define how it is going to organize itself as a political community.

What he is also saying, though, is that he is committing himself to maintain the current law in Puerto Rico which has both Spanish and English as official languages. And the provision in section——

The CHAIRMAN. I do not think he is committing to keep that. He just says that is a state prerogative. Where do you find that language of commitment here? In the first sentence, they say they will maintain both Spanish and English as its official languages.

Professor GEWIRTZ. It may have the prerogative, but also agree as a condition of statehood that the current statute in Puerto Rico will continue.

Governor ROMERO. Senator, I can add that we will be more than willing to amend this section to make sure that what we mean is that we want to keep that act. And we can also add a further amendment to make it clear that we won't pass any laws affecting the right of anybody to speak English in their place of work.

The CHAIRMAN. Isn't the real effect of this designed to protect Puerto Rico from a future amendment, either to the Constitution or to the laws, that would specify English as the official language?

Governor ROMERO. I think one of the main purposes of this, Senator, is to protect the people of Puerto Rico, to allow them their right to maintain the language that they were born with. And we feel that it is good for us to be bilingual, to speak two languages. I think that is beneficial for us. And as long as we speak the language that the rest of the Nation speaks, I do not see any reason why we should be denied the prerogative or the right to also speak another language and communicate in another language at home and in everyday business transactions and in the community.

As I have stated in my testimony, I think it is very important that the Nation improve its relations with Latin America. I think one of the best ways to improve those relations is by having citizens that are familiar with not only the language but what it brings with it from speaking the language since birth which is also a knowledge of the behavioral patterns and the psychological intricacies of other people. When you speak a language since birth, you know more about the idiosyncracies of those people who speak that language than you do otherwise.

And it is important to the Nation, and it is important to us. Puerto Rico's geographical position makes it important for us that we are the place of exchange, interchange, between the Nation and Latin America because we speak both languages. We want to keep that. We think it is to our benefit. I think it is to the Nation's benefit. We want to make sure that that is not affected.

There are many people in Puerto Rico who understand English, but they can't speak it. But they understand it. Yesterday when the Governor said that I think 50 some percent of the people could not speak English, and I readily admitted his figures were right, I have been called by many, many, many people in Puerto Rico on the phone. A big fuss has been made about that because they say many more people understand English.

They said you should have seen the people in Puerto Rico yesterday glued to their televisions all over Puerto Rico. In the stores, wherever they sell televisions, they were surrounding the television sets looking at the hearings here, and all the hearings were in English. People were understanding the hearings. They don't speak English, but they understand it.

Governor **Ferre**. May I add also, Governor, that Spanish is our mother language? And you cannot change the mother language of any community which is constrained to an island like Puerto Rico. So, there is no use of trying to think of that as a possibility. Besides, we don't think it is wise, nor is it within the rights of U.S. citizens. Under the Declaration of Independence, we have three rights: the right to life, liberty and the pursuit of happiness. And certainly if anybody tried to change our mother language, they would be destroying our right to the pursuit of happiness.

The **Chairman**. Suppose we wrote into this that henceforth English shall be the official language of Puerto Rico. What would happen in Puerto Rico?

Governor **Romero**. That would be unacceptable to me.

The **Chairman**. I understand.

Governor **Romero**. And it would be unacceptable to the people of Puerto Rico.

The **Chairman**. But what does that mean? I just do not know what it means. What would happen differently in Puerto Rico?

Governor **Romero**. I do not know what it would mean, Senator, but it certainly would be unacceptable.

Governor **Ferre**. Mr. Chairman, I discussed that subject at the status commission with Senator Jackson 20 years ago. And I opposed him on that point, and I told him very definitely that Spanish would have to be one of the official languages of Puerto Rico if Puerto Rico became a state of the Union. And he finally acquiesced, and the status commission agreed that both languages could be admitted.

The **Chairman**. Right now all records and proceedings are kept in English in Federal courts.

Governor **Ferre**. Yes, sir.

The **Chairman**. Now, beyond that, what happens if we had a law that said it is the official language?

Governor **Romero**. You are concerned with the fact that—would that force or obligate the Federal courts to keep the records in Spanish?

The **Chairman**. No, no. If we said that henceforth English shall be the official language of Puerto Rico, what happens?

Governor **Romero**. That would be an imperative. It would be unenforceable. We would resist. We would have passive resistance. We would object to it. We would have demonstrations, but you couldn't put it into effect.

The **Chairman**. That is not my question. My question is what does it mean. It doesn't mean you take the street signs down. What does it mean? It doesn't mean you rewrite school books. Does it mean anything?

Governor **Romero**. I think it would be like saying English is better. It would have that kind of connotation. Spanish is not good enough. I think it would have a bad effect on Latin America if such a bill were to become law. I think it would be looked upon——

The **Chairman**. So, it is meaningless save in its emotional content. Is that what you are telling me?

Governor **Romero**. I do not think I understand the question.

The **Chairman**. I am wondering whether there is too much heat and not enough light on this question of the Spanish language.

Governor **Romero**. There is no doubt about that, Senator. There is too much heat and not enough light. Right. I agree with that.

The **Chairman**. While it may be unacceptable in Latin America and in Puerto Rico to say English is the official language, it may be unacceptable to a lot of people up here to say Spanish is the official language which leads me to ask if there is not much in this debate, why not just be silent on the question, just leave it out altogether.

Governor **Romero**. I see what you mean. No, I don't see any problem in leaving it out.

The **Chairman**. Just stay silent on the question of language.

Governor **Ferre**. And let it become what it is, a state right which has been exercised. That's all.

The **Chairman**. Then you would leave that question for another day.

Governor **Romero**. I think, Senator, perhaps I have spoken too fast. There is a problem of perceptions.

The **Chairman**. Both in the Congress and in Puerto Rico.

Governor **Romero**. Right. At home the adversaries of statehood have told the people of Puerto Rico over and over again that if we become a state, we will be forced to learn English and to speak in English and that Spanish will disappear eventually. That is what they say.

And people do not like to lose those things that are dear to their hearts. People do not like to lose those things that are part of their nationality, part of their being, part of their personality, part of their heritage.

And now, since that has been said, we need some kind of assurance at the same time for everyone in Puerto Rico to say, look, it is not the Nation's intention, it is not the Federal Government's intention, to impose the English language in Puerto Rico and to make all Puerto Ricans speak in English. That is not the intention.

And in order to address ourselves to that issue, something has to be said. Maybe the wording here is not the most adequate. Maybe we should look for other wording. Maybe the word "official" is unnecessary. Maybe we could talk about Spanish and English. Maybe we can talk about the coexistence of both languages, Spanish and English, and the coexistence of the cultures and some other wording.

But I feel that we must go home when we go to a plebiscite and let the people of Puerto Rico be addressed that it is not the Congress' intention or the Nation's intention to force a language on us.

And particularly, since some states have seen that it was necessary to pass a law that says English is the official language and some laws are saying that you have to speak English only in the place where you work, I think those laws will eventually be declared unconstitutional when they go to the Federal courts. That is my personal opinion.

But that also has been used by demagogues in Puerto Rico to say look what can happen.

The **Chairman**. Well, Governor, I have a lot of sympathy to bilingualism. I am from Louisiana. We are trying to recapture our lost language there. We have a group called CDFL, Council for the Development of French in Louisiana, because we have lost our facility in French that at least we used to have in southern Louisiana. I think there is a great deal to be said—and we say it all the time in Louisiana—about cultural diversity, about bilingualism, about all those things.

It seems to me, though, my offhand appraisal is the best thing to do would be to leave language out of this piece of legislation and to resist any attempts by someone to come in and say English is the official language. And there will be those attempts. You can be sure of that because by putting it in this legislation, then you get the whole focus of debate in the Congress and out in the 50 states about how different Puerto Rico is and that it is Hispanic. It doesn't want to be American. They want to insist on their separateness. I think it just emphasizes separateness.

Most Americans, let's face it, have not been to Puerto Rico. They do not know about those things you testified about yesterday, about the strong American identity, years of citizenship of Puerto Ricans and all of those things. They haven't even been there. They don't know.

And nothing is going to change if you leave it silent. The only thing that might change is from time to time someone might put in a bill in the Congress and say English is the official language of every state, and I think it would be resisted and probably killed. I forget when that last was done up here. I think they tried to do it with Miami, didn't they? And Spanish is still the official language in Miami. [Laughter.]

We better strike that from the record.

The point is I think we would be a lot better off just to be silent on this, and I know it will be an issue to be debated. But if you are silent, then you can say, well, we considered that, and let Puerto Rico be Puerto Rico because you cannot, by passing a law, change people's habits.

I think really if you had a law that says English is the official language, probably the only difference would be that you would print laws of the legislature side by side, English and Spanish, which would probably be a good idea to do anyway, but it is no big deal. We used to do it in my state.

And then there is something about state court proceedings. You may have the right to have certainly an interpreter. I don't know what you have in state court proceedings. But I just think that is a big deal, and you don't want to risk this whole legislation over the issue of Spanish language.

Governor ROMERO. Understand, Senator, people who are now watching us in Puerto Rico are now at rest from hearing your words and hearing your expressions. My only concern at this point in time is the way things are used in campaigns where people twist words, that once this has been put in here, something is eliminated, oh, they had to eliminate it because—now, see, they are going to make you speak——

The CHAIRMAN. Oh, you are going to have to defend against a lot of things.

Governor ROMERO. We will have to take a harder look at this. We are put at rest by what you expressed and what your expressions are, and I am sure that people that are watching this are aware also that it is not your intention by any means to have Spanish done away with or English imposed upon the people of Puerto Rico as the only language or anything of that nature. Everyone understands that that has heard you.

And I know that your concern is to making sure that this bill goes through, and we appreciate that.

I cannot at this point in time, Senator, give you an answer. It is something that I would have to think over and discuss, and give it much more thought.

The CHAIRMAN. You see, it would be my thought—and I cannot speak for Senator McClure, but my guess is—it is just a guess—that he would agree with me on that, that we would resist an amendment to make English the official language provided we made this silent. But, see, if you put in Spanish, then you make a great big target there, and that becomes the focus of this whole legislation.

Governor ROMERO. Let me say, Mr. Chairman, that on behalf of the people that I represent and the people who want statehood for Puerto Rico and I am sure of many, many other Puerto Ricans that are probably not statehooders, we appreciate very, very much your expressions and your assurances. And I think they will be very, very, very welcome words in Puerto Rico.

The CHAIRMAN. Well, I cannot assure anything other than my own intention.

Governor ROMERO. Of course. We know that.

The CHAIRMAN. I sometimes try to speak for other Members of Congress and am frequently reminded that I do not have that ability. [Laughter.]

On this question I asked the independence group today about a question of appeals on the validity of the election, certification of the election, do you have any advice on that?

Governor ROMERO. Yes.

The CHAIRMAN. Did you hear that this morning?

Governor ROMERO. No, Senator. I was sitting down with some of the advisers.

The CHAIRMAN. My question is—and I would like to ask some of these legal experts. We didn't resolve the question. With the independence group, they have a provision that says—I think it is with the election, that all jurisdiction of U.S. courts are withdrawn.

And the question is let's suppose that it appears or that they think that independence has won by 50.01 percent. What court decides then the election proceedings?

Governor ROMERO. Well, that is what I had suggested, sir, that we would like to see the Federal court having jurisdiction over the election proceedings in the plebiscite or the referendum.

We have at the present time problems with the electoral commission. We feel that the elections in San Juan, the capital city, were fraudulent—the results—and that we have won the City of San Juan, and yet the official results are otherwise. There are still votes to be counted, which have been refused to be counted by the elections commission. So, we don't have much faith in our elections commission, and we feel that it is necessary to have jurisdiction of the Federal courts to make sure that they are fairer than we would expect them to be.

The Chairman. Now, the commonwealth group has some problems with the Federal courts. Can we get a neutral court here?

Governor Romero. Well, I don't know. There are only two courts in Puerto Rico, the local courts and the Federal court.

The Chairman. Well, we could give jurisdiction to a Federal court of appeals.

Governor Romero. For the special election? Well, we have no problems.

We would much rather have that because of what has happened, Senator, I do not know if you are aware of this, but there is a big issue at home now. The Governor has refused to reappoint over 30 judges in the whole system. It is about a third of the whole judiciary system. Their terms have expired and he has refused to reappoint them where they are holding office. Now, he has been criticized because that puts those judges under too much pressure and allows there to be undue pressure exercised upon them by the governor. And they depend upon his sending the nomination to the Senate. So, there is too much pressure or fear in the minds of those judges that they will not be reappointed and that there is too much control of the executive over the judicial branch. And we are very concerned about that in an election from what we have seen happen in San Juan.

Professor Gewirtz. Senator Johnston, if I could make just a very brief comment on this. It seems pretty clear to me that the most appropriate court to hear legal issues on a referendum held under a Federal law, which this is, would be some Federal court. In other words, there is standard jurisdiction in Federal courts to hear questions arising under Federal law. This referendum would, obviously, be held in a manner arising under Federal law. So, the appropriateness of Federal court jurisdiction here seems to me to be clear.

And there is ample precedent for statutes designating special courts and defining their composition, whether they be composed of district judges from various places or a mix of court of appeals judges and district judges, to hear legal issues arising under particular Federal statutes. So, the proposal you suggest is one that has ample precedent and I think would be appropriate.

The Chairman. Well, this is a very complicated question of the law because many of the issues arising under an election law could violate the Civil Rights Act, could violate other things which would trigger Federal jurisdiction, Voting Rights Act. You might have jurisdiction as a constitutional question.

But what we want to do is we don't want to violate those things and get into a lot of legal difficulty. At the same time, it is important that we get a forum for considering the legality of the election which is relatively acceptable to all three parties. And you understand the Federal courts really—they have the same criticism of the Federal courts that you do I guess of the state courts. I am talking about the commonwealthers. And the Independentistas want to stop Federal jurisdiction on independence.

Governor Romero. May I propose what I think probably will have to be the solution from practical expediency? If the court administrator from stateside were to appoint a judge to take care of the election matters in Puerto Rico, to go to Puerto Rico as a judge appointed by someone else going down to Puerto Rico.

Now, I would like to say just a couple of things about that. That is—in a way that would be slighting the U.S. District Court of Puerto Rico which are permanent appointments. They are presidential appointments and they are permanent. They are not appointed only for a few years.

There has been a very extensive poll that was made in Puerto Rico by Jankelovich which showed that the U.S. District Court in Puerto Rico and the Federal courts were the most highly respected institutions in Puerto Rico.

And let say that the Independentistas themselves, when they have problems with civil rights, they do not go to local courts. They go to the Federal courts.

The CHAIRMAN. Well, I understand that, but as I say, we want to try to get a neutral forum that gives no advantage to anyone. And I think that from the standpoint of the Independentistas—I mean, I think this question of the validity of the election ought to be resolved in U.S. courts both for their protection and for the protection of everyone.

Now, it occurred to me that you could give original jurisdiction of this election to the Supreme Court. They would, of course, appoint in effect a special master which would be like appointing the district judges you are speaking of. But I haven't thought through all those questions of how you define what is an election problem that ought to be decided by the Supreme Court as opposed to what are all the ancillary questions that might come up.

I wish the three parties would get together on this. The three parties, believe it or not, have worked very well to resolve some of the housekeeping questions, and I would hope we could do that on this court question.

Governor ROMERO. Senator, may I bring something that is similar to this in a way? I have concerns that perhaps one of the political parties might in the moment of truth or before that moment of truth comes decide not to go to the plebiscite or referendum representing its formula, the formula they have traditionally defended and advocated.

In 1967 the plebiscite that was held in Puerto Rico had a section of the law which stated that if any of the parties which traditionally represented a formula were to boycott or refuse to go to the plebiscite, then that formula could be represented by a private group of citizens.

In the case of the statehood, as a matter of fact, the Statehood Party then decided to boycott the plebiscite, and we went with Don Luis Ferre and organized a private organization to represent statehood. Actually we got four percent more than the Statehood Party had gotten three years before and we had to organize in six months.

So, I think something like this perhaps should be written into this bill.

The CHAIRMAN. When you say to represent the formula——

Governor ROMERO. The option.

The CHAIRMAN. What is the role of the parties in any of these?

Governor ROMERO. The parties will be representing the options.

The CHAIRMAN. Where?

Governor ROMERO. In Puerto Rico.

The Chairman. I mean, anybody can go and get some television ads and say we represent statehood. Where is the official status? There may be some language in some of these three things where parties have an official status. I know we are giving money to the parties, but aside from that.

Governor Romero. Let me check with the electoral laws. I have a feeling that for all plebiscites—at least the way the plebiscite law read in 1967 was that the parties were the ones that represented the formulas.

The Chairman. Maybe for election laws, for poll watchers, that sort of thing.

Governor Romero. That's right. In order to implement the referendum, there will have to be a bill, a law, passed in Puerto Rico to help implement the plebiscite by the local legislature.

Now, we want to make sure the bill includes that kind of statement that if one of the parties refuses to come forward, that private organizations be allowed to come forward and represent as they did.

The Chairman. If it is like Louisiana law, in a runoff election, the two candidates appoint—I think they call them—commissioners, but they are really in effect poll watchers to watch over the elections. If that is what you have in mind, that kind of law, I think it is surely reasonable because the interest of all parties should be—to ensure the fairness of the election should always be respected. No question on that.

I do hope all three parties will participate, and I would expect that they would. Frankly, having gone this far, and if we can produce the piece of legislation that I hope we can, I think it would be rather difficult to withdraw.

Governor Romero. I think so, but I have a feeling.

The Chairman. Believe me. This is a lot of work that the members and staff are putting in, and we don't want to put in a year or two of work, and then have them say, well, no, we didn't really mean it. We are just kidding. [Laughter.]

Governor Romero. We are not. You can be sure that at least we are not kidding.

The Chairman. My guess is that the people of Puerto Rico will have even greater appetite for determining their own future under one of the three after they have seen how the process works.

So, give us an indication of what it is you mean by that, and we will accommodate.

Let's see if there are any other areas here.

[Pause.]

The Chairman. Yes. Your constitution requires a two-thirds vote of both houses to change the constitution. To what extent is that requirement applicable to this plebiscite? Perhaps our constitutional——

Governor Romero. Well, in the first place, we do not think our constitution requires any change except the name in Spanish. Outside of that, I think everything else in the constitution is acceptable and that is what we have in our bill. We would have the same constitution apply. As a matter of fact, we have even said we would keep the name in English, "Commonwealth", just to underscore also the fact that the commonwealth is only a name of a body politic. That is the only change. In Spanish we would call it Estado Soberano de Puerto Rico. We would be the Sovereign State of Puerto Rico.

The CHAIRMAN. Is there any question that this plebiscite would have to be ratified by two-thirds of the——

Governor ROMERO. The plebiscite? No, not the plebiscite. Any amendment to the constitution would, but not the plebiscite.

Governor FERRE. Mr. Chairman, I would just like to ratify that I was a member of the constitutional assembly, and I was the one who introduced the bill to have over two-thirds of the votes in the legislature for amendment to the constitution. The reason was that under our law no party can have more than two-thirds of the members of any of the chambers. In order to have the thing be always bipartisan, I introduced that bill so at least one member from the opposition had to vote in order to make a change to the constitution.

The CHAIRMAN. Well, I have heard it suggested—I do not give it as my own argument—that if approved, this would then have to go back to the legislature. Say you approve statehood and then someone would file a lawsuit that said, well, you had to have two-thirds in each body. I want to give your legal expert a right to reply to that argument before it is made while he is here.

Governor ROMERO. We will address ourselves to that argument, sir. We have to study it. My initial impression or interpretation is that, no, we didn't even think about that because there is no concern. Here is a plebiscite. The majority of the people of Puerto Rico vote. We left the constitution as it is. There is no change except the name which cannot affect any of the rights of anyone under the constitution. So, if the name needs to have two-thirds approval, I am sure that we can work that out, but the rest of the constitution will remain the same.

The CHAIRMAN. I would think that we would have that power to do so. I would think that the power under our constitution would override whatever requirement that is. And it may not be a serious question, but I just raise the question in case you had a legal memorandum on that.

Well, obviously, there is a tremendous amount of work yet to be done. We have to decide those questions about transition period, about the number of years. You understand our concern with revenue neutrality. The period of years for a transition would have to be much shorter. My inclination is to say somewhere within 10 years. Whether that means five years or 10 years, I don't know. Obviously, the whole committee has to make a judgment, and then the other committees, particularly Finance, have to make the ultimate judgment on taxes.

But I am in good hopes that we can put together a package here that is realistic. It is not going to be the kind of generous thing which you would ask for and I would expect you to ask for the ultimate and end up with that which is fair and just and proper and right.

So, with that, Governor, if you have nothing further to add, I would thank you and thank all of your colleagues for being very helpful to the process this afternoon.

Governor ROMERO. Thank you very much, Senator. And I would just like to say a few words in closing.

The CHAIRMAN. Let there be order. The Governor is still speaking.

Governor ROMERO. Considering the economic conditions and adjustments, I would just beseech the Senator and the members of the committee to look at the long-term benefits to both the Nation and Puerto Rico. Perhaps in the short term there might be some adjustments necessary so that the long term is more beneficial to all concerned.

The best investments from an economic point of view usually have a few years that you suffer losses so that then you make better profits. When you start making a profit at the beginning, that type usually doesn't last long for some reason or other. It is only those that have a solid base and solid foundation and enough working capital is put into them.

I think this way too I believe that the relationship that is to be established from our point of view is such a permanent relation and it is to the interest and benefit of the Nation and to us that we don't have any economic shortfalls or prejudice on the country, that it is beneficial for Puerto Rico and beneficial to the Nation.

And with that, Senator, I would like to end also by thanking you and staff once again and Senator McClure and his staff and the committee staff for all the interest that you have shown in Puerto Rico in this process in really trying to help us reach a definition which I think is way overdue and which I think will help all concerned. And we thank you very much.

The CHAIRMAN. Thank you, Governor.

[Whereupon, at 3:33 p.m., the hearing was adjourned, subject to the call of the Chair.]

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